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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 69

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,

Petitioners,

—v.—

JACKSONVILLE TERMINAL COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

BRIEF FOR RESPONDENT

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ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Whether the Railway Labor Act or other Federal railway legislation preempts or supersedes the application of state law to restrain secondary pressure by railway employees against a terminal carrier with which they do not have a dispute cognizable under the processes of the Railway Labor Act, when the conduct of the employees, unless restrained, threatens the economic strangulation of the economy of the state.

2. Whether the Norris-LaGuardia Act deprives a state court of jurisdiction to grant injunctive relief in an action brought exclusively under state law.

3. Whether the jurisdiction of a state court to adjudicate an action brought exclusively under state law is preempted by the jurisdiction of the National Labor Relations Board ("NLRB") under the Labor-Management Relations Act ("LMRA"), when the controversy which led to the state court action is entirely within the railroad industry and the labor relations of all participants directly with each other are subject to the Railway Labor Act and not to the LMRA.

4. Whether the First and Fourteenth Amendments prevent a state court from entering a limited injunction against picketing of an employer which has the avowed purpose and effect of coercing that employer to cease doing business with another employer in violation of state statutes.

STATEMENT OF THE CASE

General.—The Jacksonville Terminal Company ("Terminal Company" or "respondent") is a Florida corporation which operates a passenger and freight rail terminal facility in Jacksonville, Florida. (JA 4, 21, 29) Through the terminal property flow the routes of the so-called "Jacksonville Gateway"—the rail gateway into peninsular Florida. The two carriers (as of the time of the hearing in this case)[1] whose lines make the main use of the terminal property are Atlantic Coast Line Railroad Company ("Coast Line") and Seaboard Airline Railroad Company ("Seaboard").

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[1] Subsequent to the completion of the record in this case, the Seaboard and the Coast Line merged, effective July 1, 1967. See *Florida East Coast R. Co.* v. *United States*, 386 U.S. 544 (1967). For the sake of clarity, in this brief we shall generally refer to the separate ownership of the Coast Line and Seaboard, which existed at the time of the making of the record, in the present tense.

Seaboard and Coast Line operate throughout the Southeastern United States. The two other railroads using the terminal facilities at the Jacksonville terminal are the Southern Railway System and the Florida East Coast Railway Company ("FEC"). The FEC's line runs down the east coast of Florida from Jacksonville to Miami. Each of these four carriers, at the time of the hearing in this case, owned 25 percent of the stock of the Terminal Company.[2] (JA 4, 21, 29, 95, 309)

The Coast Line and the Seaboard are, together with the FEC, the sole rail carriers serving peninsular Florida. The FEC serves only the east coast of Florida and not central Florida and the Gulf coast of Florida—including the Tampa area—whose sole rail service is by the Seaboard and the Coast Line.

The FEC—which is not a party to this suit—has been involved in labor disputes with its employees for many years. For well over five years there has been a strike by the nonoperating employee unions against the FEC. See *Brotherhood of Railway & Steamship Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966). On April 24, 1966, certain of the FEC's operating unions, the petitioners here—the Brotherhood of Railroad Trainmen ("BRT"), the Order of Railway Conductors and Brakemen ("ORC&B"), and the Brotherhood of Locomotive Firemen and Enginemen ("BLF&E")—also went on strike against the FEC. (JA 57)

Terminal Company and the principal railroad users of its facilities—the Coast Line, Seaboard and Southern—had no dispute with any of their own employees or with peti-

[2] Pursuant to the merger of Seaboard and Coast Line (see note 1, *supra*), the merged carrier succeeded to the ownership of 50 percent of the stock in Terminal Company.

tioners. Nonetheless, in the early morning hours of May 4, 1966, petitioners[3] threw a picket line around all the pedestrian, road and rail entrances to the terminal property—except one rail entrance which was solely a point of entrance and exit for FEC movements. (JA 221, 251-52, 311, 331; 63, 75, 244-45; 300-06)

The Jacksonville Terminal.—It is, perhaps, somewhat misleading to the person not familiar with railroading language to call the Jacksonville terminal property a "terminal". This is because that property is very far from being simply a "terminal" where freight or passenger movements begin and end. Rather, it is a "throat" of rail commerce—a place *through* which freight and passengers move by rail, either as a part of a move on a single carrier or by means of an interchange between carriers. This is due to the strategic location of the terminal property athwart the main line of the Coast Line into Florida, and athwart one of the principal lines of the Seaboard into Florida. Virtually all the freight carried by Coast Line *on its own line* to and from the Florida peninsula passes through—as a matter of necessity—the terminal property. (JA 335-38) The Seaboard line through Jacksonville also goes through the terminal property, and this line carries a substantial amount of all freight moved by Seaboard *on its own line* to and from the Florida peninsula. It includes virtually all the freight carried by Seaboard on its own line to and

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[3] There was a dispute as to whether the ORC&B and BLF&E were involved in the picketing with the BRT. It was established that the names of these organizations were printed on the picket signs used by the pickets, but that their names were covered with a tape. A representative of the ORC&B attended two private meetings at which the BRT discussed its plans to picket the Terminal Company premises. (JA 84-85, 173, 177-78, 245-47, 253-259, 353, 365-373) The state court included the ORC&B and the BLF&E in the injunction. For our response to the petitioners' argument with respect to these two brotherhoods, which is based on the Norris-LaGuardia Act, see p. 69, *infra*.

from the industrial complex of Duval County (in which Jacksonville is located). It is necessary in all cases for the Seaboard's freight trains to go through the Jacksonville terminal property if cars are to be cut out for interchange or to be added in Jacksonville.[4] (JA 216-20, 238-40)

Besides these extensive moves of freight which pass through the terminal property on the lines of Coast Line and Seaboard without interchange, there is also a substantial amount of interchange of freight between lines which is carried on in the terminal property. The Coast Line and the Seaboard interchange freight with each other at this point.[5] The Seaboard and Coast Line interchange freight with the Southern, using the terminal property. In addition, all these three carriers interchange freight with the FEC at this point. (JA 216-219, 224, 234-38, 316-17, 329, 340) The FEC's line runs up the east coast of Florida and terminates at the north bank of the St. Johns River in Jacksonville. Its yards are located some 12 miles on the other side of the St. Johns River from the Jacksonville terminal yards. Those of its cars which are destined for points north of its lines are brought from its yard across the river into the terminal properties and there inter-

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[4] On the map at page 9, the main line of the Coast Line (shown in red) coming from the north enters the terminal property at McQuade Street and exits from the terminal property at Dennis Street. The main line of the Seaboard (shown in blue) which passes through the terminal property cuts across a neck of that property, entering near Acorn Street when coming from the north, and exiting near Stockton Street. These main line entrances to the terminal property were all picketed. (JA 63, 75, 216-17, 244-45, 300-06)

The line of the Southern does not extend south of Jacksonville in Florida.

[5] Subsequent to the merger, of course, the physical switching of such freight between the former Seaboard lines and the former Coast Line lines continues to occur in the Jacksonville terminal property or makes use of its facilities, even though it does not now legally constitute an "interchange."

changed with carriers serving points north of Jacksonville.[6] (JA 287, 329-30, 340-41)

Inasmuch as the Jacksonville terminal is the principal rail gateway into peninsular Florida, the amount of rail traffic which it handles is enormous. Ninety-five percent of the United States mail carried into or out of Florida—2,000,000 sacks each month—is handled through the Jacksonville terminal. None of this mail is handled by the FEC. (JA 16-17, 303, 334-35)

In addition, a major portion of the freight carried in and out of peninsular Florida by rail passes through the Jacksonville terminal. The freight movements handled through the terminal involve shipments to markets throughout the country of large quantities of perishables, such as the Florida citrus crops and other fruits and vegetables. Shipments are made of many other nonperishable commodities, on the movement of which the industrial economy of Florida depends and on which manufacturing and farming enterprises in other parts of the country rely. (JA 14-15, 295, 297-98, 333-35)

The FEC is not the principal user of the Jacksonville terminal property. Carriers other than the FEC make the principal use of the property. Less than six-tenths of one percent of all passenger cars handled annually through the Jacksonville terminal at the time of the hearing in this case[7] were handled for the FEC. (JA 12-13, 289-90) We

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[6] Terminal Company employees do not actually handle cars moving in the terminal area, except those moving to the industries located in the terminal area; movements rather are handled by employees of the carrier bringing the cars into the terminal; these employees also throw those switches which are manually operated. Terminal Company employees operate the remote switching systems in the terminal area from the towers. This allocation of functions prevails both on through movements by a single carrier and on interchange movements. (JA 281-82, 290-91, 311-12, 328-29)

[7] See note 13, p. 15, *infra*, for the subsequent abandonment of all passenger service by the FEC.

have already referred to the extensive main line through movements of cars for carriers other than the FEC which pass through the terminal property. The FEC has no main line through freight movements which pass through the terminal property. With respect to interchange of freight in the terminal property, in a sample month only 30 percent of the interchanges were interchanges to which the FEC was a party. Seventy percent of all freight cars handled through the terminal annually are for railroads other than the FEC. (JA 346-47)

The Location and Effect of the Picketing.—Without warning, on the morning of May 4, 1966, the petitioners stationed pickets at every entrance to the terminal, whether for passengers, employees, or freight, and at every public crossing around the perimeter of the terminal where train or switching movements could enter the terminal property from the outside.[8] The map on page 9 shows the terminal property and the location of the pickets thrown up by petitioners that morning.[9] The picketing included, without exception, crossings where the trackage was under the sole control and ownership of either Coast Line, Southern, or Seaboard. (JA 63, 75, 216-17, 300-06) This included crossings where the entering cars would not be those involved in interchange with the FEC but which would be handled solely by the Coast Line or by the Seaboard into, through and beyond the terminal area.[10]

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[8] As indicated above, the sole exception was the point at the bridge across the St. Johns River where the FEC's line enters the terminal property. There is no public crossing of the track at this point, and hence the only entrance used by FEC car movements into the terminal property was not picketed. (Plaintiff's Ex. 1; JA 63)

[9] It is adapted from Plaintiff's Ex. 1; see JA 63.

[10] Thus, pickets were stationed at the Seaboard's Stockton Street and Acorn Street crossings, which are the crossings at which Seaboard's main line passing through Jacksonville enters and exits

The text of the picket signs carried by the FEC employees is set forth in the margin.[11] The first words of

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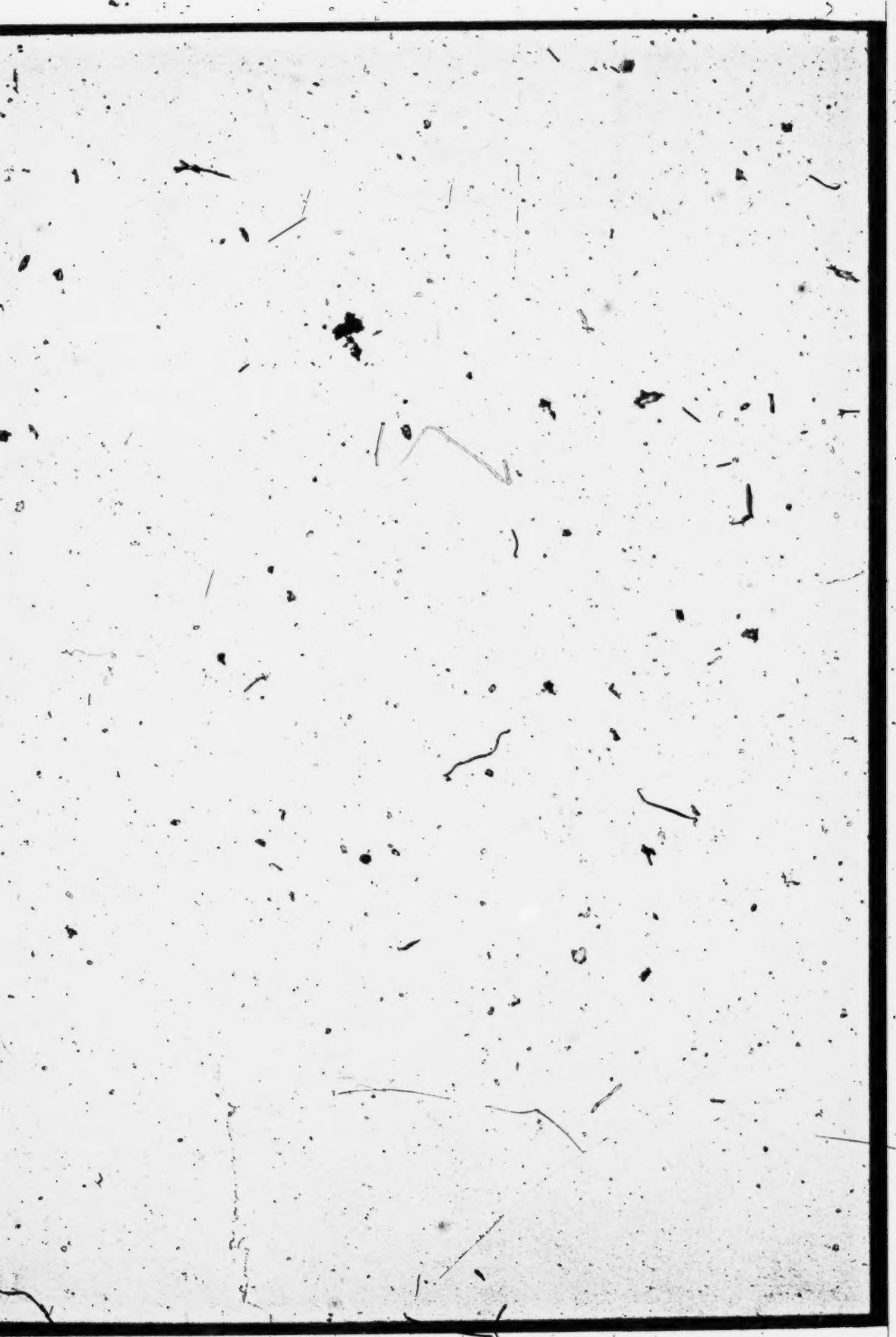
from the terminal property. See note 4, p. 5, *supra*. (See JA 217) The McQuade Street crossing, which is within the terminal property but which is the access for the entry of Coast Line main line trains coming from the north, was also picketed and a main line train from Richmond to Jacksonville stopped. (JA 304-05) Finally, cars entering or leaving the terminal area by the Dennis Street crossing are those which move as parts of train movements along the Coast Line's main line to Sanford and Tampa, Florida. (JA 303-04) These trains run up and down the central and western Florida peninsula, parallel to the FEC's line running up the east coast, and it is most improbable that any cars which could conceivably be involved in an interchange with the FEC would enter at this crossing. The entrance in question—like the Seaboard's Acorn Street entrance—is solely one through which main line trains pass, and the Coast Line's road crews who would encounter the pickets at this point would not be those involved in interchange with the FEC.

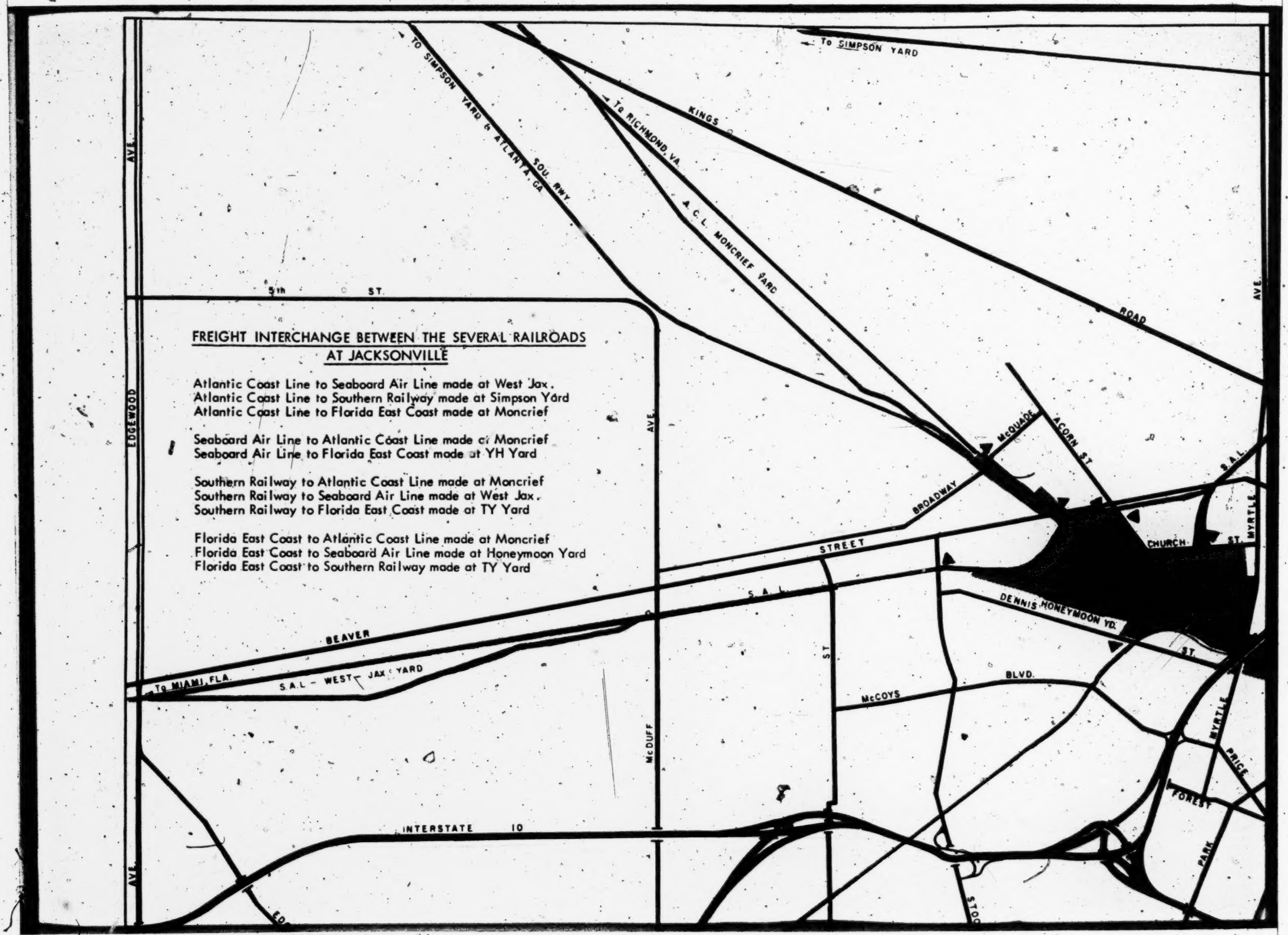
Faced with the fact that the pickets at the Dennis Street crossing not only were there to stop movements which were *predominantly* not related to the FEC—as indeed were the other pickets stationed around the perimeter of the terminal area—but indeed were there to stop movements which were *entirely and completely* unrelated to the FEC, the petitioners have resorted to a quibble and have urged that the picketing at this point was not of the rail lines themselves but of a dirt road adjacent thereto, through which, it is said, employees sometimes entered on foot. (See Petitioners' Br., pp. 17, 19) The record, however, makes it plain that the dirt road was immediately adjacent to the tracks and that a road crew moving a train on the tracks would have seen the "DO NOT CROSS" signs. (JA 303-04) On this and other evidence (JA 63, 75, 304), the trial court correctly found that the pickets "patrolled at all entrances and exits by rail, foot or vehicle . . . ." (Fdg. 5, JA 182)

The AFL-CIO says (Br., pp. 31-32) that the BRT's "picket lines did not cut tracks used exclusively by non-struck carriers." In the light of the above which shows picketing at Stockton, Acorn and Dennis Streets, it must be assumed that this assertion reflects this *amicus'* unfamiliarity with the record.

[11] "FELLOW RAILROAD MEN
DO NOT CROSS OR ASSIST FEC
B OF RT ON LAWFUL
STRIKE
AGAINST FEC
PLEASE MAKE COMMON CAUSE WITH US
IN MAJOR DISPUTE AGAINST FEC"

(JA 66)




FREIGHT INTERCHANGE BETWEEN THE SEVERAL RAILROADS AT JACKSONVILLE
Atlantic Coast Line to Seaboard Air Line made at West Jax.
Atlantic Coast Line to Southern Railway made at Simpson Yard
Atlantic Coast Line to Florida East Coast made at Moncrief
Seaboard Air Line to Atlantic Coast Line made at Moncrief
Seaboard Air Line to Florida East Coast made at YH Yard
Southern Railway to Atlantic Coast Line made at Moncrief
Southern Railway to Seaboard Air Line made at West Jax.
Southern Railway to Florida East Coast made at TY Yard
Florida East Coast to Atlantic Coast Line made at Moncrief
Florida East Coast to Seaboard Air Line made at Honeymoon Yard
Florida East Coast to Southern Railway made at TY Yard
To SIMPSON YARD
To SIMPSON YARD & ATLANTA, GA
SOU. RWY
To RICHMOND, VA
A.C.L. MONCRIEF YARD
KINGS ROAD
AVE.
EDGEWOOD AVE.
5th ST.
McQUADE
ACORN ST
S.A.L.
BROADWAY
STREET
CHURCH ST.
MYRTLE
DENNIS HONEYMOON YD.
S.A.L.
BEAVER
To MIAMI, FLA.
S.A.L. - WEST JAX YARD
McDUFF AVE.
ST.
BLVD.
McCOYS
MYRTLE
PRICE
FOREST
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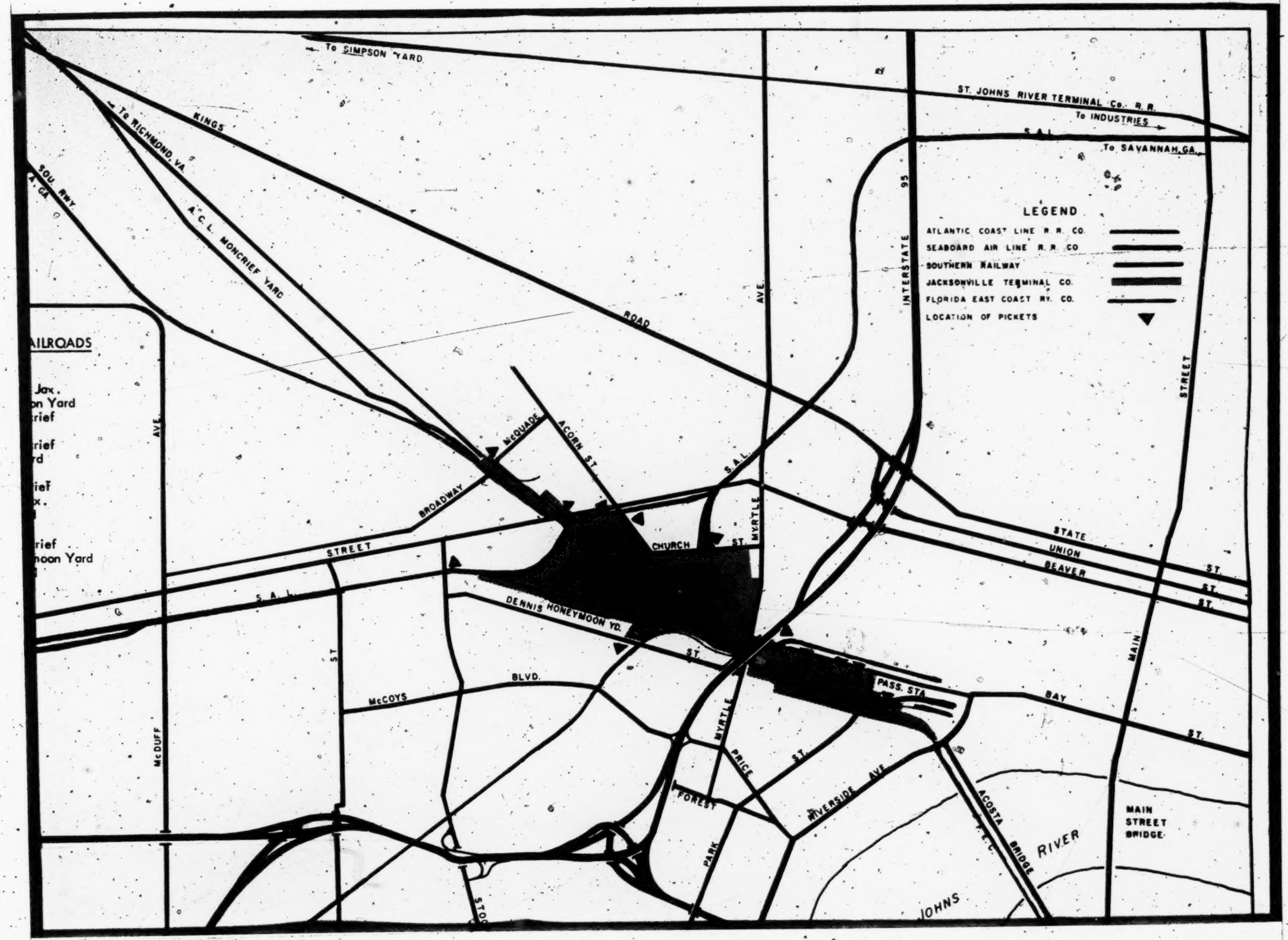
INTERSTATE 10


To SIMPSON YARD
To RICHMOND, VA.
KINGS
ROAD
SOU. RWY.
A. GA
A.C.L. MONCRIEF YARD
ST. JOHNS RIVER TERMINAL Co. R.R.
To INDUSTRIES
S.A.L.
To SAVANNAH, GA.
INTERSTATE 95
AVE.
STREET
LEGEND
ATLANTIC COAST LINE R.R. CO.
SEABOARD AIR LINE R.R. CO.
SOUTHERN RAILWAY
JACKSONVILLE TERMINAL CO.
FLORIDA EAST COAST RY. CO.
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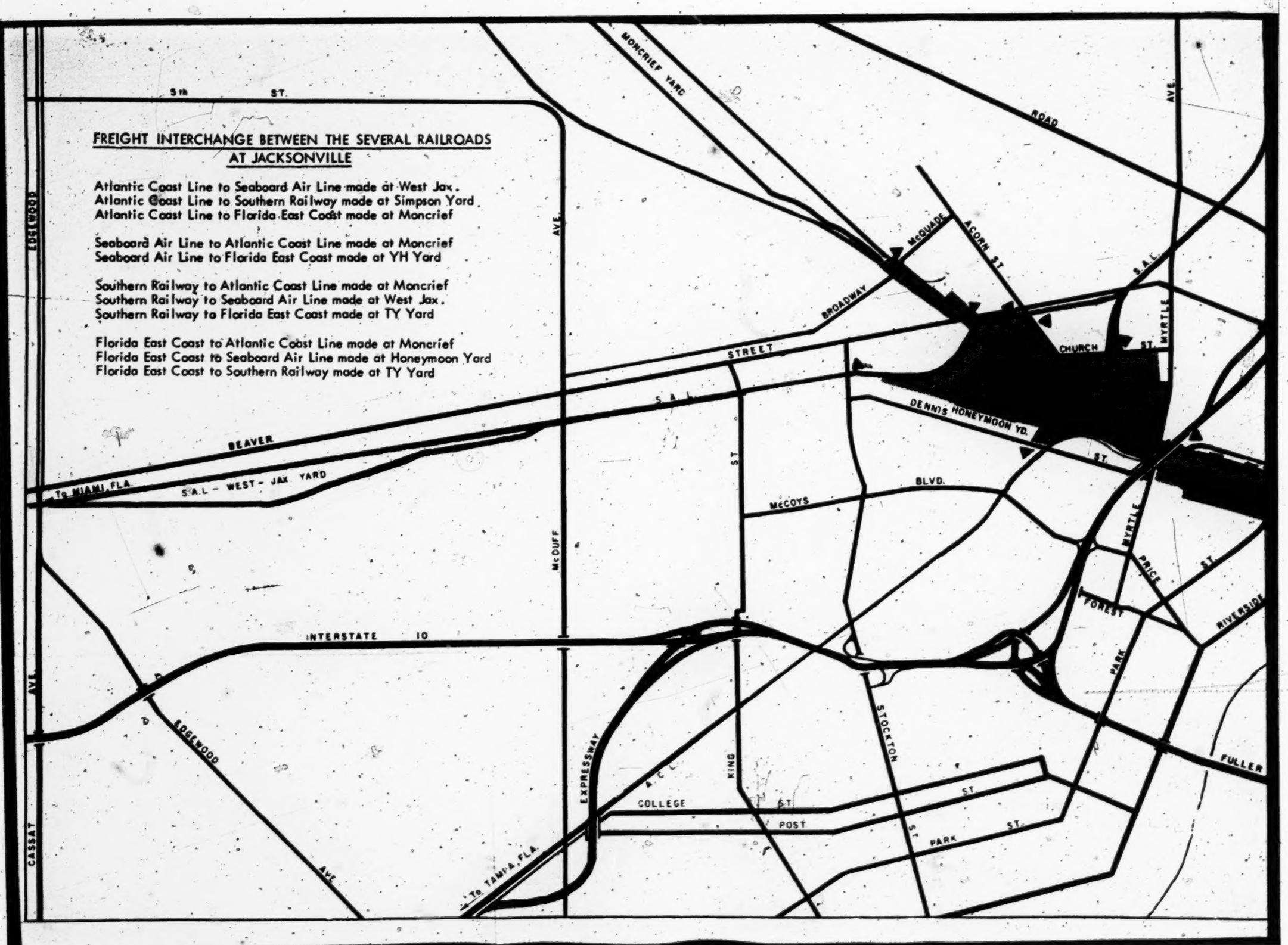
BRIDGE
RIVER
JOHNS


FREIGHT INTERCHANGE BETWEEN THE SEVERAL RAILROADS AT JACKSONVILLE
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5th ST.
EDGEWOOD
AVE.
MONCRIEF YARD
ROAD
AVE.
McQUADE
ACORN ST
S.A.L.
BROADWAY
STREET
CHURCH
ST.
MYRTLE
DENNIS HONEYMOON YD.
ST.
BEAVER
S.A.L.
To MIAMI, FLA.
S.A.L. - WEST - JAX YARD
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EDGEWOOD
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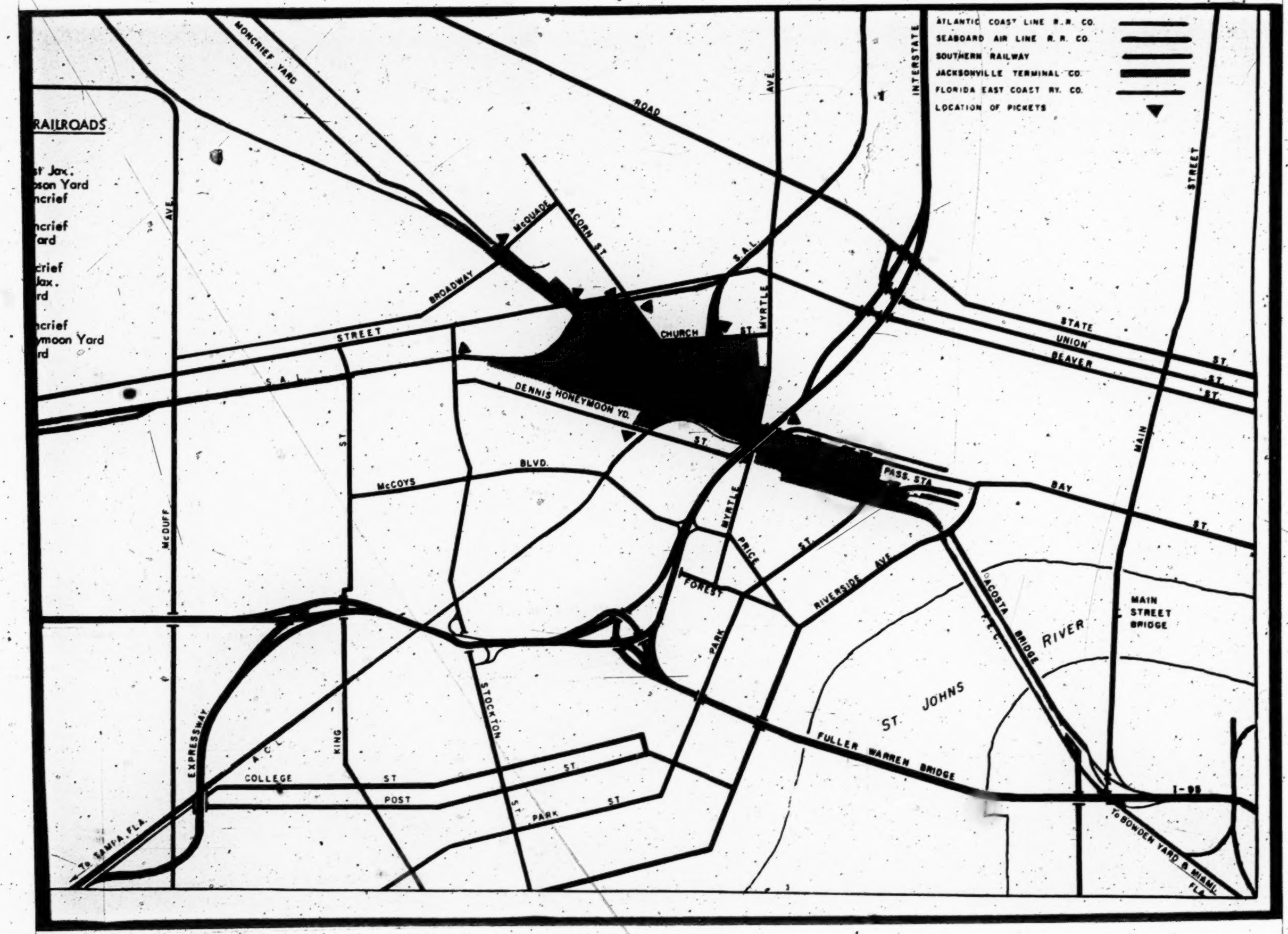
To TAMPA, FLA.


ATLANTIC COAST LINE R.R. CO.
SEABOARD AIR LINE R. R. CO.
SOUTHERN RAILWAY
JACKSONVILLE TERMINAL CO.
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ACOSTA
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F.E.C.
RIVER
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EXPRESSWAY
A.C.L.
KING
STOCKTON
COLLEGE
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PARK
ST
FULLER WARREN BRIDGE
I-95
To TAMPA, FLA.
To BOWDEN YARD & MIAMI, FLA.

exhortation on the signs were plain and unmistakable: "DO NOT CROSS." The pickets gave no indication whatsoever that the signs "DO NOT CROSS" were not intended to be literally observed without limitation. A General Chairman of the Brotherhood of Railway Clerks came to the picketing to explain that organization's policy on crossing picket lines to those of its membership who might have been considering whether to cross. (JA 377-88) This was done at the suggestion of the BRT. (JA 367-68) The record is barren of any indication that the pickets indicated any willingness to permit continuation of the through movements through the terminal not involving the FEC, or the other activities in the terminal—the terminal's predominant activities, indeed—which do not involve the FEC.[12]

The effect of the picketing was unlimited and complete. As soon as the picket line was thrown up, operations within the terminal area began to grind to a complete halt. (JA 281) A complete standstill of all activity within the terminal area commenced—not simply the handling of interchanges with the FEC but the principal activities of the

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[12] There is what we assume to be an inadvertent implication in Petitioners' Brief (p. 19) that contemporaneously with the picketing the BRT expressed the willingness to relax the picketing so as to permit movements not involving the FEC. This is simply not so. The record reference is simply to a statement made by an officer of one of the petitioners in court over three weeks later that if he had been approached at the time of the picketing and asked to limit the effects of the picketing so as to exclude trains that did not have FEC cars on them, he would have done so. (JA 264) The record is completely devoid of any indication that any such restriction of the "DO NOT CROSS" effect of the picketing was intended or communicated to anyone at the time the picketing took place. (See JA 228) The suggestion by the union official, and its repetition by the petitioners and by the AFL-CIO (Br., pp. 31-32), is simply an afterthought attempt to make the picketing into something other than what it was in order to put a better face on it in this litigation. See pp. 60-61, *infra*.

terminal, which do not involve the FEC at all—the movements handled for the account of the Seaboard and the Coast Line, and the through moves by those carriers.

The picketing did not merely stop interchange movements within the terminal property and was not limited to stopping interchanges—either FEC-related or not. The record makes it plain that main line train movements into the terminal on the part of carriers other than the FEC were stopped by the picketing. (JA 216-20, 337-38) The evidence showed that the picketing would have brought the operations of Seaboard "virtually . . . to a standstill" (JA 216), so far as the 870 Seaboard cars and 40 Seaboard trains which utilize respondent's facilities each day were concerned. (JA 216-17) Coast Line was experiencing the same result with regard to its 100,000 cars which carry military traffic, mail, citrus, vegetables and other goods in and out of the terminal property each month. (JA 333-35)

The 42 daily passenger trains operated by Coast Line and Seaboard connecting Florida and its resort areas with the population centers of the North were all subject to termination by the picketing. (JA 290) The only passenger station in Jacksonville is located on the terminal property. Thus, the picketing would, as petitioners' counsel admitted, "stop all movement of rail traffic through the Jacksonville Terminal" (JA 195) and the traffic thus stopped would be the bulk of rail traffic into and out of peninsular Florida.

The record also established that the picketing threatened disruption of many businesses dependent on rail services. The operation of the Jacksonville Port Authority, which is serviced by trains which must pass through the terminal would have been curtailed and the Authority's handling of approximately 1,000,000 tons of cargo per year would have been drastically reduced. (JA 198, 219) A large concrete

company in the area with five separate facilities and an annual payroll of close to a million dollars could not operate if the rail moves through respondent's facilities were stopped. (JA 202-03, 220) The operations of the St. Regis Paper Company in Duval County, employing 1,600 persons, would have been halted by the picketing. (JA 209-11) The same result would have prevailed with respect to a great number of other businesses and industries in the immediate area. Indeed, the same effect would have been experienced throughout the state. (JA 220, 311-13)

The picketing also threatened to bring the operations of respondent to a halt, including the services which it performs for a number of industries which have located next to the terminal property. (JA 70-74, 238-40, 281-82, 311-13)

The picketing also threatened the effective stoppage of all mail transportation to Florida; 95 percent of the United States mail to and from Florida is handled through the Terminal Company—all by carriers other than the FEC. (JA 16) For each 24 hours during which the Terminal Company's mail department is shut down, six days are required to catch up. Moreover, the Railway Express Agency, which is located immediately adjacent to the terminal, and which handles over 1,000,000 items per month, the bulk of which are perishable (and none of which come from the FEC), would shut down if rail transportation through the terminal property were stopped. (JA 14-17, 295-98, 309)

Thus, as the trial judge found on the basis of ample evidence in this matter, the establishment of pickets at the various exits and entrances to respondent's property served effectively to cut off all rail movement with respondent or through its terminal, due to the fact that the employees of respondent and the nonstruck carriers using or moving through the terminal property honored the picket

line. (JA 182) As the trial court aptly found on abundant evidence, the effect of the picketing was so great that, if permitted to continue, it would cause the "economic strangulation" of Florida. (JA 183)

The picketing was first enjoined by a temporary restraining order and preliminary injunction issued out of the Federal District Court for the Middle District of Florida in a proceeding brought by Coast Line, Terminal Company and Seaboard. Petitioners appealed to the Court of Appeals for the Fifth Circuit. That court characterized petitioners' conduct as follows:

> "[The picketing] covered substantially the entire Terminal Company premises, as well as other contiguous sites in Duval County which were under the sole control and operation of the ACL and SAL. As a result of the picketing, hundreds of appellees' employees refused to work. . . .
>
> "Attempting to translate the factual description of appellant's [petitioners here] activities into labor jargon, for purposes of legal analysis, *this was an attempt,* through peaceful picketing, *to elicit a secondary boycott of the FEC by the appellee-companies,* which depended for its success upon the aid of appellees' employees in refusing to cross appellants' picket lines." *Brotherhood of R. Trainmen* v. *Atlantic Coast Line R. Co.,* 362 F.2d 649, 651 (5th Cir. 1966). (emphasis supplied)

Nevertheless, the Court of Appeals reversed the judgment of the District Court on the sole ground that the Norris-LaGuardia Act deprived the Federal courts of jurisdiction to enter such an injunction. This Court granted certiorari, 384 U.S. 1000 (1966), but affirmed the judgment

of the Court of Appeals by an equally divided Court, the argument having centered almost exclusively on the question whether the Norris-LaGuardia Act ousted the Federal courts' jurisdiction with respect to the matter. 385 U.S. 20 (1966).

Subsequent to the decision of the Court of Appeals for the Fifth Circuit holding the Federal courts to be without jurisdiction, this action was commenced in the Florida Circuit Court for Duval County by Terminal Company, on the grounds that the picketing either violated, or was an unlawful attempt to induce respondent to violate, the Florida Transportation Act, 13A Fla. Stat. Ann. 351.01-351.30, and the Florida Restraint of Trade Act, 16 Fla. Stat. Ann. 542.01-542.12. The complaint also alleged that the picketing was an attempt to induce a secondary boycott, which is unlawful under Florida law, and alleged other violations of state law. (JA 25-26)

Counsel for petitioners admitted that the technique of the picketing was to "stop all movement of rail traffic through the Jacksonville Terminal." (JA 195) The objective of the picketing was to cause Terminal Company and the other carriers not connected with the FEC to cease interchanging with the FEC. (JA 264) Indeed, the petitioners admitted in testimony before the trial court that if the respondent and the other carriers stopped interchange operations with the FEC, the picketing would be halted. (JA 252-53, 259-60, 264)—In fact, petitioners openly and plainly at one point took the position in this Court that if the respondent and the other carriers imposed an embargo upon the FEC, the picketing would cease.[13] (See Memo-

[13] This suggestion puts into perspective an occasional makeweight argument of petitioners (see Br., p. 16), claiming that the terminal is a place of business of the FEC because the FEC had a

randum of Respondents [petitioners here] in Opposition to Petitioners' [including respondent here] Application for an Order Staying Proceedings, etc., No. 220, O.T. 1966, pp. 18-21; see also JA 264.)

The trial court, after a two-day hearing at which witnesses were examined orally, granted a limited[14] temporary

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single passenger train each day which used the passenger station in the terminal and because its passenger engines and coaches were there serviced by Terminal Company employees. These functions would not have been affected by an embargo; yet the petitioners were evidently willing to call off the picketing without their cessation.

The passenger car usage by the FEC of the terminal is the basis for so much of the petitioners' rhetoric about the terminal property being the place of business of the FEC that it might be well to halt a minute to put the matter into perspective. The FEC, at the time of the making of the record in this case, ran one passenger train each way daily (except Sunday) in and out of Jacksonville. (JA 12-13, 289-91) The other carriers, at the time of the making of the record in this case, ran 42 passenger trains each day into or out of the terminal property. (JA 290) The FEC train was two cars long. (JA 290) The FEC abandoned all passenger service on July 31, 1968, pursuant to an order of Florida regulatory authority. The FEC was shown to have accounted for less than one percent of all the passenger cars handled into and out of the terminal. (JA 12-13, 289-90)

On page 16 of Petitioners' Brief, a lengthy litany of activities which Terminal Company employees performed for the FEC is recited. Literally half of these functions are functions which were performed exclusively on the former daily passenger train, composing this minuscule percentage of the passenger cars handled through the terminal (similar services are performed for the passenger movements of the other carriers using the terminal). Thus, the references to the Terminal Company employees who "sell tickets for FEC's account, inspect, service, maintain and repair FEC engines and cars, operate and move FEC engines and cars from the station to the roundhouse and other facilities . . . " are simply to the terminal functions which were performed for the daily passenger train. For the same distorted emphasis on the single passenger train, see Petitioners' Br., p. 63; AFL-CIO Br., p. 10. As indicated above, all passenger service by the FEC has now been abandoned.

[14] At the terminal, one gate—the Bay and Stuart Streets gate—has been long designated for the use of FEC employees and

injunction against the picketing. (JA 79-82) A writ of prohibition against this order was denied by the Florida District Court of Appeal (Pet. App. 11a), and this Court denied certiorari. 385 U.S. 935 (1966).

In the meantime, the trial court, after an opportunity to the parties to present further evidence, issued a permanent injunction (JA 180-85), again limited in its application, against the picketing, on the ground that the picketing sought to coerce respondent into embargoing the FEC in violation of the Florida restraint of trade laws and into violating its obligations as a common carrier under the Florida Transportation Act; that the picketing was in the nature of an unlawful secondary boycott; and that the picketing was unlawful under certain other state common law grounds. (JA 184) The Florida District Court of Appeal affirmed per curiam, 201 So.2d 253 (1967) (JA 417), and the Florida Supreme Court dismissed an appeal and denied certiorari. (JA 419-20)

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another for the use of employees of Terminal Company and carriers other than the FEC. (JA 22-23, 30, 103-06, 109-16, 306) It was stipulated that employees of Terminal Company and all rail carriers using Terminal Company facilities and their employees were notified by bulletin of the designation of the special gate. (JA 94-95) The injunction permitted picketing at the FEC employees' gate. (JA 82)

SUMMARY OF ARGUMENT

The basic position of petitioners is that there is no agency of government—Federal, state or local, judicial or administrative—that can inhibit them from their efforts to shut down all rail operations through the Jacksonville gateway into peninsular Florida until respondent and the other nonstruck carriers using the terminal have stopped doing business with the FEC. Petitioners' contentions that the state courts were precluded from issuing the injunction in question here are without merit.

I. Neither the Railway Labor Act nor any other Federal legislation prevents the application of state law to restrain the petitioners' application of secondary pressure to the respondent and the other nonstruck carriers. Not one of the traditional hallmarks of Federal preemption or supersession of state law is present in this case.

A. This case does not present the possibility—present in cases arising under the LMRA—of a conflict between a Federal administrative regime and the state courts. Unlike the situation prevailing under the LMRA, Congress has not set up an adjudicative agency in the railroad industry to determine which secondary activities are prohibited and which concerted activities by labor are protected. Indeed, counterparts of the detailed codes of prohibitions against secondary activity and of protected activities set forth in the National Labor Relations Act ("NLRA") and the LMRA are completely absent from the Railway Labor Act. Accordingly, and inasmuch as there is no provision at all under the Railway Labor Act for settling controversies between a carrier and employees of another carrier, it is evident that Federal regulation is not so all-encompassing as to oust state law as applied to the conduct

involved in this case. Indeed, even under the LMRA, the decisions of this Court permit the state courts to function in particular areas in which the National Labor Relations Board is not in a position to take matters in hand. This case—which does not involve the application of the Board's processes, or those of any administrative agency at all—is clearly an *a fortiori* one for the permissible application of state law.

B. Furthermore, Congress clearly has exhibited no intention of making conduct of the sort involved here ungovernable by any authority, state or Federal. Clearly Congress did not intend to sanction the application of secondary pressure by railway unions to nonstruck rail carriers. The Railway Labor Act does not expressly sanction any particular union self-help measure, let alone the ones involved here. In the LMRA, Congress set the national labor policy against conduct of the kind involved here. There is nothing to suggest that Congress meant affirmatively to sanction conduct of this sort when it occurred in the railroad industry.

Despite the contentions of petitioners, the original Clayton Act was not intended to legalize the secondary boycott. It is evident, moreover, that the Norris-LaGuardia Act was not intended to change this rule and certainly was not intended affirmatively to sanction this sort of behavior in connection with railway labor disputes. Furthermore, whatever might have been the state of the law after the passage of the Norris-LaGuardia Act, it is clear that Congress firmly set the national labor policy against secondary boycotts in the LMRA in 1947. The failure positively to include railway labor under the affirmative prohibitions against secondary conduct Congress then made was not due to any desire affirmatively to sanction such behavior

in the railroad industry but because it was not conceived that any such behavior in the railroad industry was thinkable. There is nothing that suggests that Congress ever thought that even though the use of the secondary boycott should be outlawed generally, it had a salutary effect when applied to rail carriers and should have been affirmatively sanctioned for use against them. The Landrum-Griffin Act Amendments of 1959 further support this conclusion.

C. The conduct involved here clearly was secondary conduct of the sort against which Congress has expressed its policy and in support of which petitioners can point to nothing in the Railway Labor Act. The decisions of the courts and administrative agencies administering the LMRA's ban on secondary conduct make it clear that the conduct involved here would have been clearly prohibited if it had arisen in a nonrail context. There is nothing to indicate that any provision of the Railway Labor Act sanctions it in the rail context.

Accordingly, the Federal substantive labor legislation does not preempt or supersede the application of state law here to vindicate important state interests, such as those involved here.

II. The Norris-LaGuardia Act does not preclude the issuance of an injunction by the state courts in the circumstances of this case.—A. In the first place, the Norris-LaGuardia Act does not affect the equity jurisdiction of the state courts in actions based upon state law. On its face, the Act only purports to limit the jurisdiction of the Federal courts. The authorities have overwhelmingly rejected any contention that it is applicable to the state courts. While the question might be raised with respect to whether that Act should be applied to a state court under-

taking to apply Federal substantive law, its application even in that context is not indicated by the authorities; and of course, the case at bar arises solely under state law.

B. In any event, even if the Norris-LaGuardia Act applied to the state courts here to the same extent as it applied to a Federal court, and even if the state court were required to reach the same result in this case as a Federal court, the injunction could stand. This is because the Norris-LaGuardia Act should not be interpreted as precluding a Federal court from entering an injunction in the case at bar. While this Court in 1966 affirmed by an equally divided court a decision by a divided Court of Appeals to the contrary effect, that case is not a binding precedent here; this Court is free to reach a contrary result, which we would urge primarily for the reasons detailed in the argument on behalf of the present respondent and the other nonstruck carriers made in 1966.

III. The jurisdiction of the Florida courts to adjudicate this action, which is brought exclusively under state law, is not preempted by the jurisdiction of the NLRB under the LMRA. The LMRA is explicit in exempting controversies entirely within the railroad industry from the coverage of the Act. It cannot even be said that there is an arguable case of NLRB jurisdiction here; if there were such a case here, there would be one in every Railway Labor Act case. The fact that petitioners represent a few nonrail employees does not change the matter. The employees involved here were all railroad employees; the employers were all carriers by railroad. Many of the railroad brotherhoods, like petitioners, represent some nonrail employees. If this is sufficient, as petitioners contend, to create an arguable case of NLRB jurisdiction, resort to such jurisdiction would

have to be had in every case and the result would be the chaos of the collision of the regulatory regime of the NLRB with the whole area of railway labor relations, where Congress never intended it to speak.

IV. Finally, the First and Fourteenth Amendments do not prevent the limited injunction entered in this case. The cases have uniformly recognized that the First and Fourteenth Amendments do not afford the same kind of freedom to those who would communicate ideas by conduct—such as "patrolling, marching and picketing"—as is afforded to those who communicate ideas by "pure speech." Picketing and parading is subject to regulation even though intertwined with expression and association. The injunction here did not ban all picketing, *per se,* whatever its location or objective. It was limited to dealing with the abusive elements in petitioners' conduct—the application of unlawful secondary pressures. Clearly it is no more subject to attack on First Amendment grounds than would have been a cease and desist order or injunction under the secondary boycott provisions of the LMRA in an industry subject to that statute.

ARGUMENT

Introduction

The FEC's lengthy history of disputes with its employees is well known to this Court by now. See *Brotherhood of Railway & Steamship Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966); *Atlantic Coast Line R. Co.* v. *Brotherhood of Railway Trainmen*, 385 U.S. 20 (1966), *affirming by an equally divided Court* 362 F.2d 649 (5th Cir. 1966). The FEC has been subject to an employee strike for close to six years now—certainly a unique and unenviable record in the rail industry.

The present case arose because of the peculiar geographical position of the Jacksonville terminal as the rail gateway to peninsular Florida. It is the principal route into peninsular Florida for the Coast Line and the Seaboard, the two nonstruck carriers operating there. As such it offered petitioners a unique, and apparently irresistible, temptation to try to win the protracted struggle with the FEC by putting secondary pressure on Terminal Company and on the Coast Line and Seaboard—with whom they had no labor dispute—in order to try to force them to embargo and stop doing business with the FEC.

There is no question in this case as to the right of petitioners to picket up and down the entire length of the FEC's own line from the northern bank of the St. Johns River in Jacksonville to Miami. It is their effort to escalate their dispute with the FEC by shutting down the Terminal Company and the other nonstruck carriers using the Terminal Company's properties or passing through them which is at issue here.

Petitioners (Br., p. 19) and the AFL-CIO (Br., p. 11) each state that the picketing involved no "untoward incident of any kind." We are unable to fathom the meaning of this unless all it is supposed to suggest is that petitioners did not have to resort to dynamiting the trains of the innocent carriers. What petitioners did was to cut all movements into, out of, and—as would have been the case as soon as the employees who had reported for work and who were being kept on duty had been dismissed—inside the terminal area.[1] This would have cut the principal rail lines of the Coast Line and the Seaboard—carriers who had no labor dispute with their employees—into peninsular Florida. It would have shut down the entire operation of the Jacksonville terminal—the overwhelming majority of whose activities have nothing to do with the FEC. It was an action which the trial court very rightly found on ample evidence to "cause economic strangulation" of the State of Florida. (JA 183) Clearly the theory and execution of the secondary picketing involved here was itself an "untoward incident" in the history of our country's railway labor relations and, thankfully, a unique one.

Petitioners' effort to escalate their dispute with the FEC into a general shutting down of rail transportation in peninsular Florida has now been repulsed by the Florida state courts, acting pursuant to Florida state laws designed to protect interests of obvious importance to the State of Florida. Although petitioners' dispute with the FEC continues, there is peace between petitioners and respondent

[1] The internal functions in the terminal property were carried on while the picketing continued on May 4, prior to the Federal court injunction, by retaining on their jobs men who were working when the pickets were stationed. (JA 11, 13) Obviously, this method of coping with the picketing could not have been utilized had the picketing continued substantially longer than it did, inasmuch as the men would have had to have been released to go home pursuant to the Hours of Service Act. (JA 281)

and the other carriers. Petitioners are restrained only from escalating their dispute with the FEC in a manner which would injure innocent employers, with whom they have no labor dispute, and the public at large.

If the injunction entered by the state court in the present case were set aside, the door would be opened once again to the resumption of the economic strangulation of Florida which was threatened on May 4, 1966, and to the legal chaos that would be the result of accepting the petitioners' contentions:—Those contentions are, nakedly stated, that there is no governmental authority, state or Federal, judicial or administrative, which can restrain or limit in any way their escalation of their dispute with the FEC into a direct attack on the other rail carriers using the Jacksonville terminal and the Terminal Company itself.

Indeed, in terms of petitioners' contentions, it is not simply the picketing by petitioners at the Jacksonville terminal that is involved in this case. Under the legal theories of the petitioners, to the effect that the Federal courts are barred by the Norris-LaGuardia Act from enjoining secondary picketing on the railroads and the state courts are similarly barred by a preemption doctrine, petitioners could picket at any terminal property in the United States where FEC cars are received for further interchange. Thus, the effect of the petitioners' contentions is that they are free to escalate any dispute with any single rail carrier, in respect of which the "major dispute" procedures of the Railway Labor Act have been exhausted, into a basis for picketing and shutting down any terminal facility in the country through which the struck carriers' cars are handled.[2]

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[2] Perhaps petitioners are concerned as to the effects of their own legal theory. In petitioners' brief (pp. 58-59) it is indicated for the first time that there may be geographic limitations on their

Before this Court, albeit by the narrowest of margins—a four-to-four affirmance of a two-to-one judgment of the Court of Appeals—petitioners have successfully contended that the Federal courts may not enjoin their conduct. While petitioners state that it is "arguable" that the NLRB has jurisdiction over their conduct, they have repeatedly made it plain (Petitioners' Br., p. 77) that they deny the jurisdiction of the NLRB over them. It is common ground that petitioners' conduct is not within the jurisdiction of any of the agencies set up under the Railway Labor Act. See Brief of Respondents (petitioners here), No. 220, O.T. 1966, p. 48. Finally, in this case petitioners deny the powers of state tribunals to limit or regulate their conduct.

If petitioners are correct, there arises a "no-man's land" in which no agency of government could restrain conduct of this character, despite the absence of any dispute between the unions and the victims of their conduct and the disastrous effects of that conduct on the economy of an entire state. This is the net result of the petitioners' con-

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alleged "right" under the Railway Labor Act and the Norris-LaGuardia Act to picket and shut down terminals handling FEC cars. (No such limitations were suggested by them in connection with their argument in the companion case before this Court in 1966.) But it hardly seems that the principles suggested by petitioners, in any event, can really serve as an effective limitation on their legal theory. Under petitioners' theory, it would be equally permissible for employees of carriers which interchange with the Seaboard and the Coast Line not to cross picket lines at a terminal which was used by another carrier which interchanged (directly or via other intermediate carriers) with the FEC on the theory that, by controlling the subsequent routing as the originating carrier, the FEC with its substandard wages and working conditions posed a direct threat to their jobs. Thus, picketing would be permissible at terminals throughout the country. Moreover, the petitioners' legal theory as to the preemption of state court jurisdiction to enjoin picketing is not, as we understand it, limited by whether the picketing amounts to a secondary boycott or is even further removed. See Petitioners' Br., pp. 27-41.

tentions. We submit that such a result is intolerable and that no principle of law compels or justifies it.

I. NEITHER THE RAILWAY LABOR ACT NOR ANY OTHER FEDERAL LEGISLATION PREVENTS THE APPLICATION OF STATE LAW TO RESTRAIN THE KIND OF SECONDARY PRESSURE INVOLVED IN THIS CASE

None of the hallmarks of Federal preemption or supersession of state law developed by this Court is present in this case. This Court has stated:

> "The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142 (1963).

The pattern of Congressional regulation of labor relations in the railway industry does not justify the conclusion that state law is preempted or superseded in its application to the conduct exhibited by petitioners in the present case. It leads to precisely the opposite conclusion.

Specifically, the regulatory mechanism and processes set up by Congress to deal with labor disputes in the railway industry do not apply at all to this conduct. Unlike the situation prevailing in industries governed by the Labor-Management Relations Act of 1947 ("LMRA"), there is no Federal administrative regime governing this conduct, with which the jurisdiction of a state court or the application of state law might conflict. Nor is there any basis for imputing to Congress a purpose to leave this conduct free

from all regulation, state or Federal. As we show below, pp. 51-63, *infra*, had petitioners' conduct occurred in the context of an industry governed by the LMRA—presumably less vital to the nation's welfare than its rail transportation system—it would constitute unlawful secondary conduct. It is irrational to attribute to Congress an intention to leave petitioners' secondary conduct uniquely free from regulation.

A. There is no conflict—actual or potential—between the regulatory structure of Federal legislation in the railway labor field and state court jurisdiction or the application of state law in this case.

First.—Unlike the NLRA and the LMRA, the Railway Labor Act does not create an administrative agency with authority to determine in the first instance whether conduct of employers and employees is protected or prohibited under Federal law. The NLRB has this authority in disputes outside the railroad industry. The LMRA in 1947 added the provisions of Section 8(b)(4) to the NLRA, which provide an intricate set of statutory guidelines to be administered by the NLRB as to prohibited secondary and protected conduct.

The issues as to the lawfulness of particular conduct aimed at third parties in an industrial dispute in a nonrail context, thus are generally committed to an administrative regime. The existence of this administrative regime is the key to this Court's major preemption decisions under the LMRA. This Court has held the LMRA to preempt state jurisdiction over conduct which could arguably be prohibited or protected under Federal law, primarily because of the danger that the states would reach results inconsistent with what the NLRB might determine.

That this is the operative principle behind the preemption doctrine in LMRA cases was clearly established in *Garner* v. *Teamsters Union*, 346 U.S. 485 (1953). The Court, in analyzing whether state law could be applied in the context of labor union conduct which was arguably protected by the original NLRA and arguably prohibited by the prohibitions added to that Act by the LMRA, observed that the LMRA "leaves much to the states, though Congress has refrained from telling us how much." *Id.*, at 488. It then related the principle of preemption specifically to the existence of the administrative regime of the NLRB, stating:

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. *It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order.* Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes towards labor controversies. . . . *A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. . . .*" *Id.*, at 490-91. (emphasis supplied)

Significantly, the Court observed that the Federal law approach in the NLRA and LMRA "consists of substituting federal statute law applied by administrative procedures in

the public interest in the place of individual suits in courts to enforce common-law doctrines of private right." *Id.*, at 496.

This rationale of *Garner* was made even more explicit in this Court's leading preemption decision, *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959). *Garmon* based the preemption doctrine squarely on the need to avoid conflict between the administrative regime of the NLRB, on the one hand, and the courts, whether state or Federal, on the other. This Court stated:

> "[*T*]*he unifying consideration of our decisions has been regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience.*
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> * * *
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> "At times it has not been clear whether the particular activity regulated by the States was governed by § 7 or § 8 [of the LMRA] or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board. What is outside the scope of this Court's power cannot remain within a State's power and state jurisdiction too must yield to the exclusive primary competence of the Board. . . . When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." *Id.*, at 242, 244-45. (emphasis supplied)

This principle has remained "the unifying consideration" of this Court's labor preemption decisions since *Garmon*. As Mr. Justice Brennan stated in *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 306-07 (1964):

> "Congress has invested the National Labor Relations Board with the exclusive power to adjudicate conduct arguably protected or prohibited by the National Labor Relations Act. [Citing *Garmon*.] If the peaceful picketing complained of in this case is such conduct, Congress has ordained—to further uniform regulation and to avoid the inconsistencies which would result from the application of disparate state remedies—that only the federal agency shall deal with it."

See also *Marine Engineers Beneficial Ass'n* v. *Interlake S.S. Co.*, 370 U.S. 173, 174, 181, 185 (1962); *Local 100, United Ass'n of Journeymen & Apprentices* v. *Borden*, 373 U.S. 690, 694, 695-96 (1963); *Vaca* v. *Sipes*, 386 U.S. 171, 180-81 (1967). *Cf.* Note, *Federal Preemption in Labor Disputes*, 63 Nw. U.L. Rev. 128, 145 (1968).

There is no danger or possibility in the present case of this sort of conflict or inconsistency between state court jurisdiction and state law, on the one hand, and a Federal administrative regime, on the other. In short, there is no administrative regime comparable to the NLRB, administering a code of prohibitions of secondary activities and permissions of other labor activities, under the legislation governing the railway industry. Thus, the considerations which have led to preemption of state courts and state law in certain situations governed by the LMRA are wholly inapplicable.[1]

[1] *Capital Service* v. *NLRB*, 347 U.S. 501 (1954), which petitioners cite as illustrating the state-Federal conflict supposedly

The Railway Labor Act does not contain any regulatory regime for the adjudication of what methods of economic warfare used against third parties are permissible, unlike the provisions of the LMRA. The Act does not contain any express sanction for any particular method of union self-help at all, let alone the secondary methods employed here. Unlike the LMRA, it contains no code of protected concerted activities and no code of forbidden self-help techniques. The Act does provide for a detailed procedure, and for a panoply of boards and other cooling-off and mediatory devices, contemplating the settlement of so-called "major" disputes between rail carriers and their employees.[2] But these procedures have at all times been unavailable to respondent and the other carriers in the situation in which they found themselves as a result of petitioners' conduct. The regulatory system of the Railway Labor Act thus simply does not reach this conduct at all; nor—it hardly needs saying—does the Boiler Inspection Act or the remainder of the litany of irrelevant statutes invoked by petitioners. (Petitioners' Br., p. 31 n. 11)

This recitation by petitioners of the various statutes applicable to the railway industry proves only the obvious fact that Congress has frequently exercised its power under the Commerce Clause with respect to the railroads.

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engendered by this case (Br., p. 28), was a simple application of the principle of preemption relevant to cases under the LMRA; it involved a state court injunction against conduct which was also the subject of unfair labor practice adjudication before the NLRB. This Court stated:

> "[W]here Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in a conflict of functions, the federal court may enjoin the state proceeding in order to preserve the federal right." *Id.*, at 504.

[2] Compared to the LMRA, the Act is restrictive even as to the right to strike; strikes over "minor disputes" and representation controversies are banned.

This fact is merely the starting point of an inquiry into preemption. In itself it settles nothing. Conflict with a Federal regulatory regime or a clear Congressional mandate to exclude state law must be present to require preemption. *Florida Lime & Avocado Growers, Inc.* v. *Paul, supra,* 373 U.S., at 142. See also *Fitzgerald* v. *Catherwood,* 388 F.2d 400, 403 (2d Cir. 1968), *cert. denied,* 391 U.S. 934 (1968).

As a leading authority has stated:

> "The constitutional decisions allocating to Congress power to enact labor legislation mean (1) that the national government may regulate labor relations, including strikes, boycotts, and picketing, and (2) that it may forbid the application of state laws, whether statutory or judge-made. Both propositions are true beyond dispute, but note that they are only permissive. The national government may choose not to exercise its power over labor relations or to use only part. The allocation of constitutional power to Congress does not automatically exclude the operation of state labor laws." Cox, *Federalism in the Law of Labor Relations,* 67 Harv. L. Rev. 1297, 1299 (1954).

More particularized analysis of the details of a regulatory scheme is therefore necessary when a claim of preemption is urged. To assert, as do petitioners, that employer-employee relations in the railway industry are completely encompassed by Federal law is to beg the question of preemption, not to answer it. Analysis shows that Federal regulation is not so all-encompassing as to oust state law as applied to the conduct exhibited in this case.

The procedures of the Railway Labor Act—for conference, negotiation, mediation, arbitration, and conciliation—apply to disputes between carriers and their employees

over terms and conditions of employment. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 722-24 (1945); *Brotherhood of R. Trainmen* v. *New York Cent. R. Co.*, 246 F.2d 114 (6th Cir. 1957), *cert. denied*, 355 U.S. 877 (1957). But respondent and the other carriers had no such dispute with their employees or with petitioners. The only dispute cognizable under the processes of the Railway Labor Act has been between petitioners and the FEC.

There is no provision in the Act for settling controversies between a carrier and employees of another carrier over whose terms and conditions of employment the first carrier has no dispute. Moreover, the Railway Labor Act, unlike the LMRA, does not address itself specifically to the question of secondary conduct at all. It does not expressly purport to permit any particular method of union self-help, let alone the secondary methods used here. No preemption decision of this Court would justify a holding that the Railway Labor Act ousts state law over a matter not even covered by the Act.

Petitioners suggest (Br., p. 37) that this Court's decision in *Brotherhood of Railway & Steamship Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966), establishes that any limitation on labor's rights of self-help in a Railway Labor Act dispute must come from Federal law. That decision leads to no such conclusion. It did not involve any question of preemption or supersession of state law. The dispute in that case between the nonoperating brotherhoods and the FEC was a "major" dispute cognizable under the processes of the Railway Labor Act. As the opinion of this Court pointed out: "The controversy centers about § 2 Seventh of the Act, which provides: 'No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class embodied in agree-

ments except in the manner prescribed in such agreements or in section 6 of this Act.'" 384 U.S., at 243. The precise question for adjudication was whether the self-help efforts of the FEC had violated this provision. Clearly, this was a question of Federal law.—On the other hand, the controversy in the present case between petitioners and respondent is not a dispute cognizable under the processes of the Railway Labor Act, and no question as to the construction of that Act is presented here. The only question is as to the propriety of the application of economic pressure by the unions to third-party carriers—a matter not covered by the Federal legislation at all.[3]

Second.—Indeed, even in the context of the more extensive regulatory regime under the NLRA and LMRA—

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[3] The conflict which petitioners (Br., pp. 35-36) purport to find between the decision below and the decision in *Jacksonville Terminal Co.* v. *Florida East Coast R. Co.*, 363 F.2d 216 (5th Cir. 1966), *cert. denied*, 385 U.S. 950 (1966), does not exist.

The Court of Appeals there held that the interpretation and enforceability of the Operating and Guaranty Agreement relating to the Jacksonville terminal are governed by Federal law. The reasons why Federal law applied clearly emerge from the Fifth Circuit's opinions in that and its prior decision upholding Federal-question jurisdiction over the interpretation of the Agreement, *Florida East Coast R. Co.* v. *Jacksonville Terminal Co.*, 328 F.2d 720 (5th Cir. 1964):

> "This contract [the Operating Agreement] would have been illegal but for the order of the Interstate Commerce Commission approving it . . . . We think the contract which was authorized by federal statute and made legal only because of the federal statute may be construed by the federal court upon application of the plaintiff." *Id.*, at 722; see also 363 F.2d, at 218-19.

In the present case neither the Railway Labor Act nor other Federal legislation governing the railway industry takes the conduct of petitioners in hand; no such Federal legislation either legalizes it or makes it subject to injunction (giving effect to this Court's decision in the companion case, 385 U.S. 20 (1966)). The necessary preconditions which led to the application of Federal law with respect to the Operating and Guaranty Agreement are absent with respect to secondary conduct on the railways.

which explicitly deals in detail, for example, with secondary conduct, as the Railway Labor Act does not—this Court has upheld state authority to enjoin secondary pressure when the conduct or dispute involved is not cognizable under the Federal legislation.

Thus, in *Hanna Mining Co.* v. *District 2,* 382 U.S. 181 (1965), this Court upheld the power of a state court to enjoin, under state law, secondary conduct engaged in by a union in an industry subject to the NLRA in an effort to organize supervisory personnel not covered by the NLRA. This Court emphasized that no danger to national labor policy was presented by a state court injunction in a specific context where the regulatory regime under the NLRA and LMRA did not apply. *Id.,* at 192-93.[4]

An analogous principle, allowing scope for state law to operate in specific areas not covered by the LMRA, underlies this Court's decision in *International Union* v. *Wisconsin Employment Relations Board,* 336 U.S. 245 (1949), the so-called *Briggs-Stratton* case. This Court there held that union conduct which was neither protected nor prohibited by the NLRA and LMRA could be enjoined by a state. The Court stated that the union's conduct

> "... was neither forbidden by federal statute nor was it legalized and approved thereby. Such being the case, the state police power was not superseded by congressional Act over a subject normally within its exclusive power and reachable by federal regulation only because of its effects on that interstate commerce which Congress may regulate." *Id.,* at 264-65.

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[4] See also *Incres S.S. Co.* v. *International Maritime Workers Union,* 372 U.S. 24 (1963); Come, *Federal Preemption Since Garmon,* 17 Lab. L.J. 195, 196 n. 3 (1966); *cf. Carey* v. *Westinghouse Elec. Corp.,* 375 U.S. 261 (1964); Note, *Collective Bargaining Agreements and State Antitrust Immunity,* 77 Yale L.J. 789, 792-93 (1968).

This Court further reasoned:

> "There is no existing or possible conflict or overlapping between the authority of the Federal and State Boards, because the Federal Board has no authority either to investigate, approve, or forbid the union conduct in question. *This conduct is governable by the State or it is entirely ungoverned.*" *Id.*, at 254. (emphasis supplied)

The Court commented, in words precisely applicable to the situation in which Terminal Company and the other carriers in this case found themselves when they were picketed by petitioners:

> "Here, the employer has resorted to no retaliatory measures and its motive in asking help from the State is not even alleged to be anti-union but merely a desire to keep its plant in operation." *Id.*, at 256.

Contrary to the assertion of *amicus curiae* AFL-CIO, (Br., pp. 21-22), this Court's decision in *Briggs-Stratton* has not been "interred" by *Garmon* or any other decision of this Court. *Garmon* did not overrule the basic holding of *Briggs-Stratton* that conduct which is neither "legalized and approved" nor "forbidden" by Federal statute is governable by the states. *Garmon* held on this point that the initial determination whether conduct is protected or prohibited, in a case arising in an industry regulated by the LMRA, should be made by the NLRB, not the courts. It modified *Briggs-Stratton* only to the extent the latter suggested that a court, rather than the NLRB, could make such a determination in the first instance. See 359 U.S., at 245 n. 4. As Mr. Justice Harlan recognized in his concurring opinion in *Garmon*, the basic holding of *Briggs-Stratton* remained:

"... there is no pre-emption when the conduct charged is in fact neither protected nor prohibited. ... that holding has remained fully intact." *Id.*, at 253 n. 5.[5]

The modification of *Briggs-Stratton* to take account of the primacy of the NLRB in interpreting the coverage of the NLRA in the first instance is obviously of no relevance to the present case, since, as we have shown, there is no such administrative regime under the Railway Labor Act. This only points up the fact that the basic key to pre-emption in labor cases is actual or potential conflict with a Federal administrative regime; such a conflict is wholly lacking in the present case.[6]

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[5] That this Court did not intend in *Garmon* to overrule this basic holding of *Briggs-Stratton* is further shown by this Court's reliance in *Garmon* upon the approach taken in *Garner* v. *Teamsters Union*, *supra*. The Court in *Garner* had specifically reaffirmed this holding of *Briggs-Stratton*, stating:

"This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' [Quoting from *Briggs-Stratton*.] In such cases we have declined to find an implied exclusion of state powers." 346 U.S., at 488.

[6] This Court's decision in *NLRB* v. *Insurance Agents' International*, 361 U.S. 477 (1960), also is consistent with the basic holding of *Briggs-Stratton*, despite the AFL-CIO's contention to the contrary, pp. 22-23 of its brief. The Court there confirmed that *Briggs-Stratton* was modified to commit questions of interpretation of the NLRA "in the first instance to the Board's administrative processes [citing *Garmon*], *except in the atypical situations where those processes are not relevant to an answer to the question.*" 361 U.S., at 493 n. 23 (emphasis supplied). *Insurance Agents* held only that a union could not be held to have committed a violation of Section 8(b)(3) of the LMRA, requiring unions to bargain in good faith, "... simply because during the negotiations it seeks to put economic pressure on the employer to yield to its bargaining demands by sponsoring on-the-job conduct designed to interfere with the carrying on of the employer's business." *Id.*, at 479. *Insurance Agents* was not a preemption case at all, let alone a case involving either secondary activity or railway labor. The careful opinion in that case recognized, in the passage emphasized above, that pre-

In the present case, since there is no potential or actual conflict between state court action and a Federal administrative regime with primary responsibility for determining the lawfulness of petitioners' conduct, and since the conduct is beyond the scope and remedies of the Railway Labor Act, this conduct must be governable by the state or it will be ungovernable.

B. *Congress had no purpose to make secondary conduct of the sort exhibited by petitioners here ungovernable by any authority, state or Federal.*

Of course, notwithstanding the fact that Congress set up no administrative agency whose remedies would extend to regulation of the sort of union conduct involved here, it does not necessarily follow that Congress intended to permit the state courts to apply state law to that conduct. Sometimes, as the AFL-CIO suggests (Br., p. 12), Con-

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emption will not exist even under the LMRA when the NLRB's "processes are not relevant to an answer to the question."—*A fortiori* there should be no preemption in the present case when there is neither an administrative agency nor any process available under the Railway Labor Act to answer the questions raised here.

Teamsters Union v. *Morton*, 377 U.S. 252 (1964), holding state law awarding damages for certain secondary activities to be preempted by § 303 of the LMRA, did so because Congress in § 303 "comprehensively and with great particularity 'describes and condemns specific union conduct directed to specific objectives.'" 377 U.S., at 258. In other words, Congress made union secondary activities cognizable under the processes of the LMRA and determined in detail what secondary activities shall be regulated. But the union activities in the present case, as we have shown, are not cognizable under the processes of the Railway Labor Act, and the Railway Labor Act does not comprehensively regulate railway union secondary activities in the manner of the LMRA.

See generally Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1311-13 (1954); Note, *Federal Preemption in Labor Relations*, 63 Nw. U.L. Rev. 128, 138 (1968); Note, *Collective Bargaining Agreements and State Antitrust Immunity*, 77 Yale L.J., *supra*, at 798-99 ("conduct beyond the scope or remedies of the N.L.R.A." is subject to state court jurisdiction).

gress desires affirmatively to immunize conduct from all regulation. But it takes little more than to state this general proposition in the present context to refute its application here.

It is clear that Congress had no purpose to make union conduct of the kind exhibited by petitioners in the present case ungovernable by any authority, state or Federal. One can search the Railway Labor Act, the other Federal legislation in the railroad field, and other Federal labor laws in vain for any manifestation of such a legislative purpose. Congress' goals could scarcely have included the unbridled escalation of railway labor disputes against other carriers; its first goal in the Railway Labor Act was "to avoid any interruption to commerce or to the operation of any carrier [engaged therein] . . . ." Railway Labor Act, Section 2(1), 45 U.S.C. § 152(1) (Pet. App. 42a).[1] Federal law should not be found to supersede state law "'unless that was the clear and manifest purpose of Congress.'" *Florida Lime & Avocado Growers, Inc.* v. *Paul, supra,* 373 U.S., at 146, quoting from *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230 (1947).

Indeed, in the LMRA, Congress set the national labor policy against secondary conduct of the kind involved in this case, albeit this policy is enforced under the LMRA only outside the rail and airline industries. Section 8(b)(4), 29 U.S.C. § 158(b)(4). As we show below, there is nothing to suggest that Congress ever meant to clothe the kind of conduct here involved with Federal protection where the rail industry was involved.

State law, therefore, cannot be held to be superseded in this case on the theory that Congress intended the con-

[1] See *Brotherhood of Railway & Steamship Clerks* v. *Florida East Coast R. Co.,* 384 U.S. 238 (1966).

duct involved to be free from all regulation, despite its disruptive effects on commerce and persons not parties to the original dispute. When Congress has wanted to supersede state law in the railway industry so as to free conduct from state regulation, it has known how to do so explicitly. Thus, the 1951 amendment to the Railway Labor Act validating union shop agreements "expressly declares that state law is superseded." *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, 232 (1956).

In urging that Congress intended to render the conduct in this case free from all regulation, petitioners have no such declaration or Congressional mandate on which to rely. Instead they rely on a strange amalgam of what Congress supposedly meant—without saying so—in enacting the Clayton and Norris-LaGuardia Acts, together with what Congress supposedly meant—again without saying so—in not expressly outlawing their conduct in the LMRA in 1947.

In essence, they would have this Court conclude that because Congress has not specifically prohibited such secondary conduct on the nation's railroads in the LMRA, Congress intended affirmatively to protect it and indeed to insulate it from regulation by the states.

But petitioners have given a spurious reading of the history and background of these various legislative acts, and from faulty premises have arrived at an irrational conclusion—that Congress has affirmatively sanctioned the activity engaged in by petitioners in this case, which the Fifth Circuit in the companion case to this one called "an attempt . . . to elicit a secondary boycott of the FEC". 362 F.2d, at 651.[2]

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[2] Petitioners' conduct, as we show in greater detail at pp. 51-63, *infra*, falls within the classic definitions of a secondary boycott,

First,—The legislative history of the original Section 20 of the Clayton Act shows the very opposite of a Congressional purpose to protect this kind of activity. Representative Webb, one of the sponsors of the Clayton Act in the House, said of the provision which became Section 20:

> "I do not think it legalizes a secondary boycott. . . . [T]his section was drawn . . . with the careful purpose not to legalize the secondary boycott, and we do not think it does. . . . it is the opinion of the committee that it does not legalize the secondary boycott and is not intended to do so." 51 Cong. Rec. 9652.

He further stated:

> ". . . those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House [two years previously] . . . and the question of the secondary boycott was not raised then, because we understood so clearly it did not refer to or authorize the secondary boycott." *Id.*, at 9653.

When an amendment was offered by Representative Volstead specifically providing that "nothing in this Act shall be construed to permit a secondary boycott," Representa-

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such as that formulated by Judge Learned Hand and later approved by this Court in *National Woodwork Mfrs. Ass'n* v. *NLRB*, 386 U.S. 612, 626 n. 16 (1967). In describing the reach of the secondary boycott provisions of the LMRA, Judge Hand wrote:

> "The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel him to stop business with the [boycotted] employer in the hope that this will induce the [boycotted] employer to give in to his employees' demands." *IBEW, Local 501* v. *NLRB*, 181 F.2d 34, 37 (2d Cir. 1950), *aff'd*, 341 U.S. 694 (1951).

tive Webb explained that the amendment was totally unnecessary. He stated:

> "... this section does not authorize the secondary boycott. I say again—and I speak for, I believe, practically every member of the Judiciary Committee—that if this section did legalize the secondary boycott, there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in this House wants to do it. We confine the boycotting to the parties to the dispute. ..." *Id.*, at 9658.

After this explanation the Volstead Amendment was rejected. See *Id.*, at 9662.

Second.—The Norris-LaGuardia Act, according to its sponsors, was not intended to change but rather to restore the principles of Section 20 of the Clayton Act and rescue the Clayton Act from judicial misinterpretation. Representative LaGuardia stated of his bill:

> "There is not an underlying principle written into this bill which Congress did not enact into law back in 1914, when the Clayton Act was passed. ... this problem is not new. Congress struggled with it before it wrote the provisions into the Clayton Act in 1914 exactly as we are trying to do to-day. ... All this bill does is to reassert and reiterate and write in plain language the intent of Congress ..." 75 Cong. Rec. 5478-79.

Of particular relevance to the issues in the present case, the Norris-LaGuardia Act was clearly not intended to preempt state power or to make the railroads fair game

for disruptive tie-ups such as that attempted by petitioners here. Representative LaGuardia explained:

> "The bill does not take one iota of jurisdiction—because we have not the power—from the State courts and does not change any State law." *Id.*, at 5478.

He also commented on the special status of the railroads because of the existence of the Railway Labor Act. Representative Lankford asked:

> "Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for instance?"

Representative LaGuardia replied:

> "[T]he railroad labor act . . . takes care of the whole labor situation pertaining to the railroads. They could not possibly come under this for the reason that we provided the machinery there for settling labor disputes."
>
> • • • • •
>
> Mr. Lankford: "It [the bill] does not apply to the transportation of . . . necessities that go in interstate commerce?"
>
> Mr. LaGuardia: "Interstate traffic is entirely covered in the railroad labor act of 1926." *Id.*, at 5499; see also *id.*, at 5503-04, 5478.

Whether secondary boycotts in any industry were protected from the federal injunctive power by the Norris-LaGuardia Act has not been determined by this Court. The Fifth Circuit stated in the companion case to this one that ". . . there appears to be no authoritative Supreme

Court holding to this effect" and commented on the "paucity of decisions" in any court "dealing directly with the question of whether so-called 'secondary boycott' activity of employees and unions may be within the protection of Norris-LaGuardia." 362 F.2d, at 653.[3]

Third.—In any event, whatever the status of secondary boycotts might have been under the Norris-LaGuardia Act standing alone, it is clear that Congress firmly set the national labor policy against secondary boycotts in the LMRA of 1947.

This Court has said that in enacting Section 8(b)(4)(A) of the LMRA (now Section 8(b)(4)(B)), Congress:

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[3] The authorities cited by petitioners, pp. 51-53, 57, of their brief, for the proposition that the Norris-LaGuardia Act immunized secondary boycotts from the Federal injunctive power, held no such thing. In *United States* v. *Hutcheson*, 312 U.S. 219 (1941), this Court never characterized the conduct it held protected by Norris-LaGuardia as a secondary boycott, and counsel for the successful appellees expressly contended that the indictment nowhere charged a secondary boycott. See 312 U.S., at 227. Only the dissenter characterized the conduct as a secondary boycott, but it is clear that the conduct was primary picketing and boycotting of an employer with whom there was a representation controversy, covered by § 13(c) of the Act.

In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91 (1940), it is equally clear that the picketing union had a dispute with the persons they picketed over representation practices; in the present case petitioners have no dispute with Terminal Company or carriers other than the FEC over terms or conditions of employment or representation practices. This Court nowhere characterized the conduct in *Milk Wagon Drivers' Union* as a secondary boycott. It merely held that alleging violations of the Sherman Act does not take an injunction suit in the Federal courts out from under the provisions of Norris-LaGuardia. 311 U.S., at 103.

Petitioners also cite a statement in *Bakery Sales Drivers Local Union No. 33* v. *Wagshal*, 333 U.S. 437, 442 (1948), as interpreting Norris-LaGuardia to immunize secondary boycotts. But *Wagshal* held that the Norris-LaGuardia Act did not apply to the conduct in question, and the cited dictum merely assumed the applicability of Norris-LaGuardia to secondary boycotts without actually directing itself to that issue.

"... aimed to restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, widespread, and, as Congress evidently judged, dangerous practice of unions to widen that conflict: the coercion of neutral employers, themselves not concerned with a primary labor dispute, through the inducement of their employees to engage in strikes or concerted refusals to handle goods." *Local 1976, United Brotherhood of Carpenters* v. *NLRB*, 357 U.S. 93, 100 (1958).[4]

Senator Taft characterized the purport of the secondary boycott provisions as follows:

"It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make this an unfair labor practice." 93 Cong. Rec. 4323; II Legislative History of the Labor Management Relations Act, 1947 (hereinafter 1947 Leg. Hist.) 1106.

Senator Taft further explained:

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[4] As the Second Circuit has said, it was:

"... the clear purpose and intention of Congress to confine the warfare to an area which includes direct action against the principal antagonist whether it be a primary employer or a rival union and which would *exclude* the use of economic pressure by a union against neutral employers as an indirect means of exerting force against the union's principal target." *National Maritime Union* v. *NLRB*, 342 F.2d 538, 543 (2d Cir. 1965), *cert. denied*, 382 U.S. 835 (1965). (emphasis supplied)

"In this bill we prohibit secondary boycotts all over this country." 93 Cong. Rec. 7690, II 1947 Leg. Hist. 1654.

Senator Taft's explanation of some of the evils of the secondary boycott has particular relevance to the present case. It points up his concern with what a leading commentator has aptly called the "metastasis of labor disputes," so graphically illustrated by what happened in Jacksonville when petitioners set up their pickets. See Lesnick, *The Gravamen of the Secondary Boycott*, 62 Colum. L. Rev. 1363, 1415 (1962). Senator Taft stated:

"Take a case in which the employer is getting along perfectly with his employees. They agree on wages. Wages and working conditions are satisfactory to both sides. Someone else says to those employees, 'We want you to strike against your employer because he happens to be handling some product which we do not like. We do not think it is made under proper conditions.' Of course if that sort of thing is encouraged there will be hundreds and thousands of strikes in the United States. There is no reason that I can see why we should make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike. The Senator says they must be encouraged to strike because their employer happens to be doing business with someone the union does not like or with whom it is having trouble or having a strike. On that basis there can be a chain reaction that will tie up the entire United States in a series of sympathetic strikes, if we choose to call them that." 93 Cong. Rec. 4323, II 1947 Leg. Hist. 1107.

The kinds of secondary pressures described in the legislative history[5]—and illustrated by petitioners' conduct in this case—are clearly against the public policy of the United States. The enactment of the secondary boycott provisions of the LMRA leaves no doubt about it. Yet petitioners would have this Court believe that, despite the evident desire of Congress to "prohibit secondary boycotts all over this country," see p. 46, *supra*, Congress at the same time made a deliberate choice affirmatively to protect these same practices on the nation's railways. See Petitioners' Br., p. 55.

Petitioners rely for this extraordinary conclusion entirely on a colloquy in the Senate among three Senators, in which Senator McGrath raised the question whether enactment of the Taft-Hartley provisions would create an unfair distinction in favor of railroad workers by leaving them free to engage in practices barred to workers covered by the LMRA. Even a cursory reading of the colloquy makes it unmistakably clear that none of the three participants in the colloquy—much less anyone else in Congress—wanted to allow or authorize railway workers to engage in practices forbidden to other workers.

Senator Ives, in responding that the Taft-Hartley Bill did not cover railway workers, specifically stated:

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[5] As the Senate Committee Report characterized the type of conduct aimed at by the secondary boycott provisions of the Act:

"... it would not be lawful for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B; nor would it be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B (with whom the union has a dispute)." S. Rep. No. 105, 80th Cong., 1st Sess. 22, I 1947 Leg. Hist. 428; see also H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 43, I Leg. Hist. 547.

> "I am not upholding in any way, shape or manner any practice which is contrary to the ideas set forth in this bill or contrary to the principles being laid down ....." 93 Cong. Rec. 6658, II 1947 Leg. Hist. 1571.

Senator Taft, pointing out that railway labor had its separate body of regulatory law in the Railway Labor Act, stated:

> "We saw no reason to change that situation, because there were no abuses which had arisen in connection with the operation of the Railway Labor Act. In general, we confined our amendments to the bill to acts which, from evidence before the committee, were specifically shown to be abuses." *Id.*

In other words, instead of intending to protect railway workers in engaging in practices such as secondary boycotts, Senator Taft plainly was expressing his conclusion —which at the time appears to have been entirely correct— that *railway workers had not been engaging in such practices.* He approved of their forbearance. He wanted to stop workers in other industries from engaging in such abuses. Far from wanting to create a disparity between railway and nonrailway workers, he wanted them to behave the same.

Petitioners have simply turned the foregoing colloquy upside down to arrive at the fantastic conclusion that Congress wanted railway workers to be free to engage in secondary boycotts when other workers were prohibited from doing so. There is nothing in the language of the LMRA or its legislative history that would support any such conclusion. It is simply a misuse of language to state, as does *amicus* AFL-CIO (Br., p. 16) that Congress in 1947,

while enacting the secondary boycott provisions of Taft-Hartley, "refused to similarly amend the federal law governing railway labor relations." Congress was not asked to amend it, and as Senator Taft made clear, there was no need to amend it. It makes nonsense of what Congress was trying to accomplish in the LMRA to suggest that Congress did not specifically extend the secondary boycott provisions of Taft-Hartley to the railway industry because it thought that secondary boycotts on the railways were a salutary thing.[6] Indeed, the consequences of secondary practices in the rail transportation industry are plainly more dangerous than those in manufacturing industry. The abuses here threatened the "economic strangulation" of an entire state.

Fourth.—That Congress is hardly any more desirous of having secondary boycotts on the railways than in any

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[6] The AFL-CIO's point that only the NLRB can secure injunctive relief against violations of the secondary boycott provisions of the LMRA (Br., p. 16) is irrelevant to this case. The reason for lodging the right to seek injunctive relief in the NLRB, as the Senate discussion makes clear, was that the NLRB is the body charged with administering the NLRA and LMRA. As Senator Smith of New Jersey commented:

> "[O]ur logical procedure in dealing with these questions is through the Board, placing the responsibility on the Board to deal with such cases, whether on the one side or the other." 93 Cong. Rec. 5045, II 1947 Leg. Hist. 1364; see 93 Cong. Rec. 5041, II 1947 Leg. Hist. 1357 (remarks of Sen. Ives).

Congress simply determined that the "advantages of concentrating control of enforcement proceedings in the boards of a specialized agency outweighed the greater speed and flexibility obtainable through private actions in diverse forums." Cox, *supra*, 67 Harv. L. Rev., at 1344.

As we have shown, pp. 26-34, *supra*, there is no equivalent administrative body under the Railway Labor Act. Only a private party is in a position to secure relief against a secondary boycott in the railway industry. The existence and availability of a specialized agency to seek relief against secondary boycotts in other industries can hardly be a justification for denying relief to a private party victimized by a secondary boycott in the railway industry.

other industry is further indicated by the Landrum-Griffin Act amendment to the LMRA in 1959, which allowed railroads to seek relief under the LMRA against unlawful secondary picketing *by nonrail employees.* § 704, Pub. L. 86-257, 73 Stat. 542. This was one of the "loopholes" in the secondary boycott provisions of the LMRA, which Congress decided to close in Landrum-Griffin. See *NLRB* v. *Servette, Inc.*, 377 U.S. 46, 51-52 (1964); *United Steelworkers* v. *NLRB*, 376 U.S. 492, 501 (1964); Cox, *The Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, 270 (1959).

Congress wanted the railroads to have protection against the secondary boycott. As was explained during the discussion of the provision:

> "... inducing or encouraging strikes by employees of secondary employers, who are railroads ... will be illegal the same as the inducement or strikes by employees of any other secondary employer." 105 Cong. Rec. 6670, II Legislative History of the Labor Management Reporting and Disclosure Act 1197 (hereinafter 1959 Leg. Hist.)

This amendment was adopted in furtherance of the basic public policy of the United States against secondary pressures as defined in the LMRA. "[I]t was the clear and unequivocal intention of Congress in 1947 to outlaw the evils of secondary boycotts ...." 105 Cong. Rec. 15,531, II 1959 Leg. Hist. 1568 (remarks of Representative Griffin); see also 105 Cong. Rec. 6428, II 1959 Leg. Hist. 1079; 105 Cong. Rec. 6666-67, II 1959 Leg. Hist. 1197; 105 Cong. Rec. 14,347-48, II 1959 Leg. Hist. 1522-23.

It is paradoxical to convert that "clear and unequivocal intention of Congress in 1947 to outlaw the evils of sec-

ondary boycotts" into a mandate in favor of the unrestricted use of secondary boycotts by railway workers against the railroads. But that is how petitioners would have this Court interpret the national labor policy in this case.

C. It is plain that the policy of Congress, as expressed in the LMRA, would be violated by petitioners' conduct shown by the record here.

While, as we shall demonstrate later, pp. 73-79, petitioners' conduct is not subject to the LMRA, if it were subject to that statute it would clearly violate it. We make this point in response to the contentions of the petitioners (Br., pp. 61-65) and of the AFL-CIO (Br., pp. 25-32) that the conduct of the petitioners was the sort of conduct that Congress has generally sought to protect in formulating the national labor policy.

Of course, there is nothing in the Railway Labor Act to which petitioners can point which can be read as affirmatively sanctioning the direct application of economic weapons against persons who are not parties to a railway labor dispute. The whole approach of that Act is not one of "rights" but of "duties." (Section 2, 45 U.S.C. §152, Pet. App. 42a) The text of the Act contains nothing remotely resembling a Federal sanction for activities such as those engaged in here. Indeed, it expressly sanctions no specific method of employee self-help. One would assume, in any event, that in the railway industry Congress' policy would be more restrictive than in industry generally with respect to the escalation of labor disputes against third parties—particularly third-party rail carriers; this is because the whole approach of the Railway Labor Act is to circumscribe and restrict the use of economic weapons by the parties, even against each other, through lengthy, long-

drawn-out procedures, in a way which is completely foreign to the NLRA and the LMRA. Thus, our position hardly depends on a demonstration that petitioners' conduct would have violated the LMRA if applicable.

But, in any event, it is plain that petitioners' conduct in this case, if subject to the LMRA, would clearly violate the Congressional policy set forth in that Act.

First.—Section 8(b)(4) of the National Labor Relations Act, as amended by the LMRA, in pertinent part makes it unlawful for a labor organization:

> "(i) to engage in, or to induce or encourage any individual employed by any person . . . to engage in, a strike or a refusal in the course of his employment . . . to perform any services; or (ii) to threaten, coerce, or restrain any person . . . where in either case an object thereof is— . . . .
>
> "(B) *forcing or requiring* any person . . . to cease doing business with any other person . . . *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

The picketing here was obviously an attempt—and a successful one—both to encourage the employees of Coast Line, Seaboard, and Terminal Company to refuse to perform services, and to restrain the operations of Seaboard, Coast Line and Terminal Company; and its purpose was manifestly to force and require Seaboard, Coast Line and Terminal Company "to cease doing business with . . . [another] person," the FEC.

Counsel for petitioners admitted in the courts below that the picketing was devised to "stop all movement of rail

traffic through the Jacksonville Terminal." (JA 195) It was further admitted that if the Terminal Company and the nonstruck carriers would cease interchange with the FEC, the picketing would be halted. The Fifth Circuit in the companion case to this one concluded that petitioners' activities were an attempt "to elicit a secondary boycott of the FEC" by the Terminal Company and the nonstruck carriers. 362 F.2d, at 651.

Further, under the decisions of this Court, the picketing was clearly not primary picketing of a sort which is saved by the proviso to Section 8(b)(4). See *Electrical Workers* v. *NLRB,* 366 U.S. 667 (1961); *United Steelworkers* v. *NLRB,* 376 U.S. 492 (1964). The Fifth Circuit in the companion case specifically found that the picketing was secondary, not primary. See 362 F.2d, at 651. Obviously, the picketing was not at the premises of the FEC. *Cf. Electrical Workers* v. *NLRB, supra.* Petitioners themselves seem to acknowledge that "present-day law under Taft-Hartley [requires] picketing to be as close as possible to the employer's place of business." (Petitioners' Br., p. 48 n. 15)

Nor is this a case where the picketing was restricted to a place, not on the primary employer's premises, which was in effect a continuation of his premises, and where "the picketing employees made no attempt to interfere with any of the [connecting] railroad's operations for" persons other than the FEC. *Cf. United Steelworkers* v. *NLRB, supra,* 376 U.S., at 499.[1] Here the entire premises

[1] In *Electrical Workers* v. *NLRB, supra,* the union was on strike against General Electric, the primary employer, and the picketing took place at the General Electric premises. In *United Steelworkers* v. *NLRB, supra,* the union was on strike against the Carrier company, the primary employer, and picketed a railroad spur track immediately adjacent to the primary employer's premises. This Court said:

of the Terminal Company, at which activities that involve the FEC in any fashion play only a minor part, were picketed; the pickets carried the message "DO NOT CROSS"; there was no "attempt to minimize the effect of [the] picketing . . . on the operations of the neutral employers utilizing" the terminal;[2] and the picketing had its intended effect: all activities and movements within the terminal, not simply those for the account of the FEC, were brought to a halt.

Even where the picketing is at a site primarily occupied by the struck employer, as was not the case here, the cases hold that picketing at a gate used by employees of a neutral employer is permissible only where the neutral employers who were picketed "were connected with the normal operations of the [primary] employer. . . ." *United Steelworkers* v. *NLRB, supra,* 376 U.S., at 497; *Electrical Workers* v. *NLRB, supra,* 366 U.S., at 681. But here the picketing took place all around the periphery of the terminal, at all the lines bringing Seaboard and Coast Line trains into the terminal, where the Seaboard and Coast Line employees who enter in no case perform any work whatsoever for the FEC, and where, in some cases, none of them are likely to participate in interchanges with the FEC.

Petitioners' reliance on *United Steelworkers* as holding such conduct legal under the LMRA is wholly misplaced.

"The railroad gate adjoined company property and was in fact the railroad entrance gate to the Carrier plant. For purposes of § 8(b)(4) picketing at a situs so proximate and related to the employer's day-to-day operations is no more illegal than if it had occurred at a gate owned by Carrier." 376 U.S., at 500.

[2] *Electrical Workers* v. *NLRB, supra,* 366 U.S., at 678.

The picketing in *United Steelworkers* did not interfere with any neutral employers in any operations unrelated to the primary employer. Here the picketing halted not only the operations of the Terminal Company and the nonstruck carriers wholly unrelated to operations of the FEC; it also threatened the disruption of many businesses in and around Jacksonville and the rest of Florida, which are dependent on shipments through the Terminal Company on the nonstruck carriers. These are businesses having absolutely no connection with the FEC, yet the picketing jeopardized their operations as well. No such spreading disruption was threatened in the *United Steelworkers* case —the effect of the picketing there on neutral employers, including the picketed railroad, was no greater than if the primary employer had been shut down by the primary picketing of his premises.

This case therefore involves, as *United Steelworkers* did not, the escalation of a labor dispute: "the fanning out of unrest from the struck plant . . . ." Lesnick, *The Gravamen of the Secondary Boycott, supra,* 62 Colum. L. Rev., at 1415. This was the central evil against which Congress set the national labor policy in the secondary boycott provisions of the LMRA.

This picketing halted through movements of the Seaboard and the Coast Line on their own lines, having nothing to do with interchange with the FEC. No effort was made to limit the appeal and effect of the picketing to employees of the struck carrier—indeed, there was no picketing at all of the FEC line at the point it enters the terminal premises.[8] There was not even an attempt to limit the appeal

[8] In contrast, when the nonoperating unions picketed the Broward County Port Authority at the southern terminus of the FEC's lines and the present petitioners honored the picketing, the picketing was on a more restricted basis. In the Court of Appeals for the

and effect of the picketing to employees of the Terminal Company actually performing services for the FEC or to employees of the nonstruck carriers performing interchange with the FEC. No effort at all was made by petitioners to separate out work connected with the operations of the FEC and to neutralize or minimize the effects of the picketing on rail movements and services of the Terminal Company having nothing to do with the FEC.

Petitioners simply misstate the case when they say that they appealed to their fellow railroad workers "not to render services to FEC." (Petitioners' Br., p. 63) The appeal on the picket signs was not so limited. The signs began by saying "DO NOT CROSS." The appeal was not to cross the picket lines at all—and the unmistakable purpose and effect was to cause the employees of the Terminal Company and the nonstruck carriers to cease performing services for their own employers, whether or not in connection with the operations of the FEC. And the picketing took place at main line crossings of the Seaboard and the Coast Line and at places where the cars would not be

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Fifth Circuit, the present petitioners, referring to the picketing of the Broward County Port Authority, stated:

> "Here, the entire Port Authority was not picketed by the striking FEC Unions as was the case at Jacksonville Terminal Company in the recent case of *Brotherhood of Railroad Trainmen, et al.* v. *Atlantic Coast Line Railroad, et al.* [362 F.2d 649 (5th Cir. 1966)] .... Of even more significance is the fact that only the Port Authority employees who actually operate the beltline switch engines and handle the FEC freight interchange were called upon by the location of the picket signs to respond to the appeal of the striking non-operating unions. Finally, in this case, the economic effect of the successful picketing was primarily felt by one party, the Florida East Coast Railroad." Brief of Appellees BLF&E, *et al.*, *Broward County Port Authority* v. *Brotherhood of Locomotive Firemen and Enginemen*, Fifth Circuit, No. 23,199, pp. 14-15.

those involved in interchange with the FEC but were solely parts of through movements on the nonstruck carriers. The only purpose and effect of such picketing could have been, and was, to appeal to employees of these carriers not to render any services to their own employers until the respondent and the other nonstruck carriers stopped doing business with the FEC.

Second.—The NLRB—with the approval of the courts—has made it clear that this kind of shotgun picketing, conducted at premises utilized by both primary and secondary employers and indiscriminately disrupting the operations of neutral employers wholly unrelated to the primary labor dispute, is unlawful secondary conduct.

In *Building Trades Council,* 155 N.L.R.B. No. 42, 60 L.R.R.M. 1296 (1965), the NLRB held that picketing of a "common situs" at a gate reserved for employees of neutral employers was unlawful, whether or not their work was related to the operations of the primary employer with whom the union had a labor dispute.[4]

The NLRB explained:

> "[T]he Board has given wide latitude to picketing and related conduct confined to the sole premises of the primary employer. On the other hand, in the interest of shielding 'unoffending employers' from disputes not their own, the Board has taken a more restrictive view of common situs picketing, requiring that it be conducted so as 'to minimize its impact on neutral employees insofar as this can be done without substan-

[4] The Board construed the *Electrical Workers* and the *United Steelworkers* cases as involving picketing at the premises of the struck employer and as not presenting a "common situs" problem. 60 L.R.R.M., at 1297.

> tial impairment of the effectiveness of the picketing in reaching the primary employees.' . . . [The question in such cases is] whether a labor organization, when picketing a common situs, has taken *all reasonable precautions to prevent enmeshment of neutrals* . . . ." *Id.*, at 1298. (emphasis supplied)

Picketing at a gate reserved for neutrals was held to violate the secondary boycott provisions of the LMRA because it "unlawfully sought to disrupt the operations of the neutral subcontractors and their employees and to enmesh them in the primary dispute in a manner which could not be condoned as an unavoidable by-product of legitimate primary picketing." *Id.*, at 1299.[5]

The Board recently applied this doctrine to hold that where a special gate was authorized for employees of the primary employer—as was done in the present case—picketing of a gate used by employees of neutral employers was unlawful as "deliberately designed to enmesh the employees of the neutrals in the dispute." *Nashville Bldg. & Constr. Trades Council*, 172 N.L.R.B. No. 65, July 10, 1968, 37 U.S.L.W. 2058. Even if employees of the primary employer at times entered the premises at unauthorized

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[5] The Board's decision in this case was upheld and enforced by the Fifth Circuit in *Maxwell & Hartz, Inc.* v. *NLRB*, 387 F.2d 79 (1967), and this Court denied certiorari. 391 U.S. 914 (1968).

The Sixth Circuit also approved the Board's doctrine on identical facts in *Maxwell & Hartz, Inc.* v. *NLRB*, 383 F.2d 562 (6th Cir. 1967). Judge Edwards stated:

> "We have no doubt that the Building Trades Council does indeed have a legitimate labor dispute with the general contractor. But the Board's order . . . was a restraint upon the picketing of . . . two subcontractors with which the Building Trades Council admits it has no dispute, except in the general sense that their work contributes to the completion of the job undertaken by the general contractor." 383 F.2d, at 564.

points, picketing would be proper only where they actually entered, not at places only entered by employees of neutral employers. *Id.*, at 2059.[6]

[6] For other applications of the doctrine, see *Southeast Idaho Bldg. & Constr. Trades Council*, 164 N.L.R.B. No. 104, 65 L.R.R.M. 1206 (1967); *Orange Belt Dist. Council* v *NLRB*, 361 F.2d 70 (D.C. Cir. 1966), *enforcing* 154 N.L.R.B. No. 83, 60 L.R.R.M. 1075 (1965); *Millwrights Local Union No. 1102*, 155 N.L.R.B. No. 126, 60 L.R.R.M. 1509 (1965); *NLRB* v. *Carpenters District Council*, 383 F.2d 89 (8th Cir. 1967), *enforcing* 158 N.L.R.B. No. 29, 62 L.R.R.M. 1062 (1966); *Brown Transport Corp.* v. *NLRB*, 334 F.2d 30 (5th Cir. 1964).

The same principle was applied to hold picketing invalid on facts very similar to those in the present case by the NLRB and the Third Circuit in *NLRB* v. *Highway Truckdrivers & Helpers*, 300 F.2d 317 (3d Cir. 1962), *enforcing* 130 N.L.R.B. No. 91, 47 L.R.R.M. 1403 (1961).

There the union had a labor dispute with the Riss trucking company, which performed pickup and delivery services from headquarters in a terminal, owned by the same persons who owned all the stock in the Riss company. The terminal was shared with four other freight carriers. Pickets picketed, at the terminal, one of these carriers carrying freight from Riss on "interline" (the transfer from one freight carrier to another, comparable to "interchange" between railroads). The NLRB and the court held this picketing unlawful under the secondary provisions of the LMRA. The court emphasized that the terminal—although it headquartered Riss and was owned by the same persons owning Riss—was nevertheless a common situs and "the union must conduct its picketing so as to minimize the impact thereof on the secondary employer." 300 F.2d, at 321. Picketing other carriers at the terminal, carrying Riss-interlined freight, was deemed to have an impermissible impact on neutrals. *Id.*, at 322.

To the same effect, see *National Maritime Union* v. *NLRB*, 367 F.2d 171, 177-78 (8th Cir. 1966), *cert. denied*, 386 U.S. 959 (1967).

This Court applied an analogous principle in its decision in the so-called "Tree Fruits" case, *NLRB* v. *Fruit & Veg. Packers & Warehousemen*, 377 U.S. 58 (1964). That case involved the legality of picketing at retail stores urging consumers not to buy the products of struck primary employers, but not urging them to boycott the stores altogether. This Court held that it was critical to the determination of the lawfulness of the picketing that it was "closely confined to the primary dispute" and had the minimum effect on the secondary employers, the retail stores. 377 U.S., at 72. The Court made it plain that:

Petitioners can hardly contend that they carried on their picketing here in such a manner as to minimize its impact on persons with whom they had no dispute—the Terminal Company, the nonstruck carriers and all the other enterprises in and around Jacksonville which were affected by the picketing in this case. To be sure, an officer of one of petitioners suggested on the witness stand, three weeks after the picketing had been halted by court order, that if the respondent and the nonstruck carriers had only come to him at the time of the picketing and discussed the matter, some way would have been found to limit the picketing and permit trains that did not have FEC cars on them to go through. (JA 264) This testimony must be given the weight usually given to attempts by a party to disclaim in court the consequences of the acts for which he has been brought into court. Needless to say, no such intention was communicated to anyone at the time of the picketing. The picket signs said: "DO NOT CROSS." The picketing stopped main line trains. The pickets were set up at every entrance to the terminal property—except the FEC's rail entrance. Obviously, if there were no threat of an injunction, there would have been no incentive at all for petitioners to limit their picketing in any way. The lawfulness

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"Peaceful consumer *picketing to shut off all trade with the secondary employer unless he aids the union in its dispute with the primary employer* is poles apart from such picketing which only persuades his customers not to buy the struck product." *Id.*, at 70. (emphasis supplied).

So here, the picketing had the purpose and effect of shutting down the Terminal Company altogether and all movements of the nonstruck carriers through the Terminal Company unless and until these secondary employers aided the union in its dispute with the FEC by imposing an embargo on the FEC. The *Tree Fruits* doctrine clearly points to the illegality of the petitioners' conduct here. See also *Honolulu Typographical Union No. 37* v. *NLRB*, D.C. Cir., No. 21,367, decided August 9, 1968.

of the picketing must be evaluated as of the time it was conducted, not on the basis of retrospective statements of good intention later expressed in court. The possibility that petitioners might conceivably have conducted their picketing without involving a secondary attack on the non-struck parties certainly does not invalidate a holding that they violated state law in the manner in which they actually conducted that picketing.[7]

Third.—Likewise, the assertion by petitioners that the Terminal Company is doing "struck work" and is therefore an "ally" of the FEC not entitled to complain of a secondary boycott (Br., p. 65) is without support in the record. This Court has said that the so-called "ally" doctrine applies in situations "in which the union's pressure was aimed toward employers *performing the work of the primary employer's striking employees*" and *"the secondary employer* against whom the union's pressure is directed *has entangled himself in the vortex of the primary dispute."* *National Woodwork Mfrs. Ass'n v. NLRB, supra,* 386 U.S., at 627.[8] (emphasis supplied)

But neither of these factors is present in this case. The employees of Terminal Company are not performing the

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[7] We do not mean to imply that even had the afterthought observation of the petitioners' officer been put into effect at the time of the picketing, it would have saved it. What the witness said in court was that petitioners might have permitted main line trains to pass through if they contained no cars whatsoever which were destined for interchange with the FEC. (JA 264) Obviously, this goes beyond an attempt to restrict picketing to the actual interchanges and involves the stopping of an entire main line freight train if it contains as much as one car to be cut out and interchanged with the FEC, or if it contains as much as one car which has been originated on the FEC.

[8] "[A]n employer is not within the protection of §8(b)(4)(A) when *he knowingly does work which would otherwise be done by the striking employees of the primary employer* and where this

work of striking employees of the FEC; they are performing their own employer's work. The same is true of employees of the nonstruck carriers. It does not appear that any of the work at the terminal is part of the primary operation of the FEC other than the FEC's interchange moves, which are, of course, handled by the FEC's own crews; picketing the FEC's crews at their own gate, or their own separate yard, is not affected by the injunction. The throwing of switches and giving of signals by Terminal Company employees for the FEC moves clearly was the same as that characteristically performed by the Terminal Company as an independent contractor for all carriers using the terminal. (JA 143-44, 150-53) The same was the case as to the minimal services formerly performed for the daily passenger train the FEC then ran. (JA 12-13) The moves by Coast Line and Seaboard switching crews within the terminal of their cars destined for interchange with the FEC are no more an extension of the FEC's work than the production of raw materials by a supplier for sale to a struck manufacturer. Their work is work done for their own employers in picking up and delivering cars.

Moreover, neither Terminal Company nor the nonstruck carriers have willingly "entangled themselves" in the primary dispute. The record contains no evidence that there was any transfer of functions away from FEC employees once the FEC strike began. The switching and signaling

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work is paid for by the primary employer pursuant to an arrangement devised and originated by him to enable him to meet his contractual obligations." *NLRB* v. *Business Mach. & Office Appliance Mechanics Conference Board*, 228 F.2d 553, 559 (2d Cir. 1955), *cert. denied*, 351 U.S. 962 (1956). (emphasis suppled)

Likewise, in *Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp. 672 (S.D.N.Y. 1948), the secondary employer was doing "the kind of work which [the primary employer's] employees themselves would be doing if they were not striking." *Id.*, at 675.

services rendered by Terminal Company employees for the FEC movements are mandatory under the Interstate Commerce Act. So are the interchanges carried on with cars of the FEC by the employees of the nonstruck carriers. Sections 1(4) and 3(4), 49 U.S.C. §§ 1(4), 3(4). The same is the case under the Florida Transportation Act. 13A Fla. Stat. Ann. 351.16, Pet. App. 95a. Moreover, the FEC has obtained a mandatory injunction against Terminal Company and the nonstruck carriers, requiring them to continue to make interchanges with it. *Florida East Coast R. Co.* v. *Jacksonville Terminal Co., et al.*, No. 63-16-Civ.-J., M.D. Fla. The operations performed by Terminal Company and the nonstruck carriers with respect to FEC cars thus stem from the requirements of applicable law. Any "entanglement" of Terminal Company and the nonstruck carriers in the dispute between FEC and petitioners is strictly the result of petitioners' escalation of their dispute with the FEC through a decision to make war on the neutrals in the hope of bringing the FEC to heel.

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As the foregoing discussion shows, there is no conflict between the application of state law in the present case and the Federal scheme of regulation or the national labor policy; and "conflict is the touchstone of pre-emption." *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 250 (1959) (concurring opinion of Harlan, J.). To the contrary, the application of state law to the conduct of petitioners in this case is wholly consistent with the national labor policy toward secondary boycotts and implements it. Indeed, we submit that even if federal law were held to be controlling in the state court here on the lawfulness of petitioners' conduct, the result would be the same: the conduct would be unlawful.

A conclusion of supersession of state law is unnecessary and unjustified in this case. In the absence of an express declaration of supersession, the Railway Labor Act has been held to supersede state law only when enforcement of the state law would conflict with an express provision of the Federal Act. *California* v. *Taylor*, 353 U.S. 553 (1957);[9] contrast *Missouri Pac. R. Co.* v. *Norwood*, 283 U.S. 249, 258 (1931); *Terminal R. Ass'n* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1 (1943). Nor would application of state law here in any way disrupt the Federal regulatory scheme or interfere with the realization of congressional objectives. *Cf. Hill* v. *Florida*, 325 U.S. 538 (1945); *Teamsters Union* v. *Oliver*, 358 U.S. 283 (1959). Instead, state law here merely fills a gap in the regulatory scheme which Congress could not have intended to leave unfilled. State law as applied here is in harmony with the clearly manifested legislative purpose of maintaining rail traffic and with Congressional disapproval of economic disruption caused by secondary pressure against innocent employers.

Finally, the state courts acted here to protect a vital interest in preventing the "economic strangulation" of the state.[10] Protection of an interest of such magnitude is obviously a matter of the highest state concern. In the absence of any affirmative indication in the Federal legislation of a purpose to oust state law, supersession should

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[9] In the *Taylor* case, the state law forbade state employees to engage in collective bargaining, which was specifically authorized by the Railway Labor Act. This Court based its decision on the "conflict between federally protected collective bargaining and inconsistent state laws." 353 U.S., at 559-60, 560 n. 8.

[10] This case is thus at the other end of the spectrum from a case such as *Hines* v. *Davidowitz*, 312 U.S. 52 (1941), in which this Court held that a state alien registration law was superseded by Federal law because Congress was acting in a field of primary Federal concern, foreign relations, where the state's interest was minimal.

not be inferred in these circumstances merely from the existence of Federal legislation in the railway industry. It is inconsistent with Congress' repeatedly manifested concern with the railways as a vital instrumentality of the free flow of commerce to find in the interstices of its actions a charter for unchecked economic warfare on those railways.

II. THE NORRIS-LAGUARDIA ACT DOES NOT PRECLUDE THE ISSUANCE OF AN INJUNCTION BY THE STATE COURTS HERE

A. *The Norris-LaGuardia Act does not divest the state courts of their equity jurisdiction in actions based on state law.*

Petitioners' contention that the Florida state courts lack power to issue an injunction in this case because of the Norris-LaGuardia Act is insubstantial. The Act is plain on its face in limiting the jurisdiction *only of the Federal courts* to grant injunctive relief. The declaration of public policy in Section 2 of the Act states:

> ". . . the following definitions of and limitations *upon the jurisdiction and authority of the courts of the United States* are enacted." 29 U.S.C. § 102. (emphasis supplied)

The Act repeatedly states:

> "No court of the United States shall have jurisdiction [to grant injunctive relief in the enumerated situations]." §§ 1, 4, 5, 7, 29 U.S.C. §§ 101, 104, 105, 107.

The definitional section spells out the scope of the Act in terms which allow no room for fair dispute:

> "The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Con-

gress, including the courts of the District of Columbia." § 13(d), 29 U.S.C. § 113(d).[1]

This language is so clear and unequivocal that no court, state or Federal, has held that the Norris-LaGuardia Act limits the historic equity jurisdiction of the state courts in actions based on state law. As the Court of Appeals for the Third Circuit has said:

> "There is nothing in the language of the Act or its legislative history which can possibly, within 'the range of judicial inventiveness,' or the process of judicial *fashioning;* be construed as extending to the jurisdiction of state courts." *American Dredging Co.* v. *Local 25,* 338 F.2d 837, 852 (3d Cir. 1964), *cert. denied,* 380 U.S. 935 (1965). (emphasis original)

In Justice Traynor's words:

> "The statute aimed to restrict the federal equity power, and was justified constitutionally on the basis of Congress' power to regulate the jurisdiction of the federal courts. . . . It did not limit the remedial power of the

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[1] Petitioners advance the curious contention that this definitional section is broad enough to encompass state courts because Congress can and has limited state court jurisdiction in certain types of cases, such as patents and copyrights. (Br., p. 71) Since Congress has power to preclude all state court jurisdiction in such cases, this is tantamount to saying that the framers of the Norris-LaGuardia Act really intended to include all state courts under the prohibitions of the Act and chose this unbelievably circuitous way to do it. Not only is this inconceivable as a matter of rational legislative draftsmanship, but it runs squarely into repeated professions of the sponsors of the Act that they were doing no such thing. As Representative LaGuardia stated on the floor:

> "The bill does not take one iota of jurisdiction—because we have not the power—from the State courts and does not change any State law." 75 Cong. Rec. 5478.

See also *Id.,* at 5502 (remarks of Rep. Sweeney).

state courts . . . .". *McCarroll* v. *Los Angeles County Dist. Council*, 49 Cal.2d 45, 63, 315 P.2d 322, 332 (1957), *cert. denied*, 355 U.S. 932 (1958).[2]

In their classic work on the labor injunction, then-Professor Frankfurter and Mr. Greene wrote of the proposal which became the Norris-LaGuardia Act:

> "[It] explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220.

Professor Cox has written:

> "The Norris-LaGuardia Act was deliberately framed in terms of jurisdiction, and although this may have been partly due to supposed constitutional necessity, great care was also taken to leave employers and employees all the remedies the states might provide." Cox, *Fed-*

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[2] Other cases which have rejected the notion that the Norris-LaGuardia Act deprives the state courts of their historic equity powers are: *Ford* v. *Boeger*, 236 F. Supp. 831 (E.D. Mo. 1964), *aff'd*, 362 F.2d 999 (8th Cir. 1966), *cert. denied*, 386 U.S. 914 (1967); *United Electrical, Radio & Marine Workers* v. *Westinghouse Elec. Corp.*, 65 F. Supp. 420 (E.D. Pa. 1946); *Shaw Elec. Co.* v. *International Brotherhood of Elec. Workers*, 418 Pa. 1, 208 A.2d 769 (1965); *Dugsdale Constr. Co.* v. *Operative Plasterers Local 538*, 257 Iowa 997, 135 N.W.2d 656 (1965); *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n*, 382 Pa. 326, 115 A.2d 733 (1955), *cert. denied*, 350 U.S. 843 (1955); *General Building Contractors' Ass'n* v. *Local Union No. 542*, 370 Pa. 73, 87 A.2d 250 (1952); *Curtis* v. *Tozer*, 374 S.W.2d 557, 590-92 (Mo. App. 1964); *C. D. Perry & Sons, Inc.* v. *Robilotto*, 39 Misc. 2d 147, 240 N.Y.S. 2d 331 (Sup. Ct. 1963); *Southern Bus Lines, Inc.* v. *Amalgamated Ass'n of Street Elec. Ry. & Motor Coach Employees*, 205 Miss. 354, 38 So.2d 765 (1949); *Markham & Callow, Inc.* v. *International Woodworkers*, 170 Ore. 517, 567-68, 135 P.2d 727, 746 (1943).

eralism in the Law of Labor Relations, 67 Harv. L. Rev., *supra*, at 1341-42.[3]

The principal reed which petitioners grasp on this point appears to be a footnote in this Court's opinion in *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 514 n. 8 (1962), to the effect that: "The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court." Petitioners also point to *Avco Corporation* v. *Aero Lodge No. 735*, 390 U.S. 557, 560 n. 2, 561 n. 4 (1968), in which this Court reserved the same question.[4]

Obviously, the short answer to petitioners' suggestion that this case presents the question referred to in *Charles Dowd* and *Avco* is that this case has nothing to do with that question. This case does not involve a state court applying Federal labor law but a state court applying state law. In *Charles Dowd* and *Avco*, this Court was simply alluding to the suggestion, mooted from time to time, that

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[3] Professor Lesnick concurs:

"It seems clear that the Norris-LaGuardia Act does not itself apply to actions in state courts. . . . the decision was made to write a statute addressed to the federal courts." Lesnick, *State-Court Injunctions and the Federal Common Law of Labor Contracts: Beyond Norris-LaGuardia*, 79 Harv. L. Rev. 757 (1966).

[4] The Court of Appeals' opinion in *Avco*, 376 F.2d 337, 343 (6th Cir. 1967), contains a dictum that state courts would be precluded by national labor policy from granting injunctive relief in a case *arising under Federal labor law, i.e.*, Section 301 of the LMRA, if a Federal court could not so do.

The Court recognized, however, that the Norris-LaGuardia Act by its own terms applies only to Federal courts. 376 F.2d, at 342. Almost all the cases disagree with the *Avco* dictum even as to cases arising under Federal labor law. See authorities cited p. 67, *supra*. So do the leading writers in the field. See, *e.g.*, *Cox*, *supra*, 67 Harv. L. Rev., at 1342; Lesnick, *supra*, 79 Harv. L. Rev., at 758.

the Norris-LaGuardia restrictions on the Federal injunctive power are part of the Federal labor law and policy which Section 301 of the LMRA requires state courts to apply in Section 301 suits brought in the state courts. See *American Dredging Co.* v. *Local No. 25, supra.*[5]

Clearly, this question has no relationship to cases like the present one where a state court was requested to exercise its equity power in a suit brought to enforce state-created rights and governed by state law. Respondent based its suit in the Circuit Court exclusively on Florida law. The Circuit Court, in granting the injunction, relied on the common and statutory law of Florida: The common law of the state against secondary boycotts, and against unjustifiable interference with contractual relations and with the right to carry on business; and the statutory law, in that petitioners' conduct was an attempt to coerce respondent to violate its duty as a carrier under the Florida Transportation Act and to impose an embargo on the FEC in violation of the Florida restraint of trade laws.[6]

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[5] Of course, suits under Section 301 are suits to enforce Federally-created rights and are governed by a corpus of Federal labor law. *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957).

[6] Petitioners contend there was not "clear proof" under Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, to hold two of them, the ORC&B and the BLF&E, responsible for the picketing. This contention of course fallaciously assumes that the Norris-LaGuardia Act applies in the state courts, and thus is no more substantial than petitioners' general contention on that point. See *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 737 (1966). In any event, it is clear that there was evidence that the two unions in question were acting in concert with the BRT in arranging the picketing, since their names appeared on the signs carried by the pickets, after meetings had admittedly been held to discuss the picketing. Representatives of the ORC&B attended the meetings. (JA 84-85, 173, 177-78, 245-47, 253-59, 353, 365-73)

The District Court of Appeal affirmed solely on the basis of Florida law. (JA 417) While the question whether Federal law supersedes or preempts the application of state law by the state courts is one which itself must be determined by Federal law, clearly that fact does not transmute the case before the state court into one arising under Federal law, any more than the fact that, for example, the First Amendment sets outer limits to the application of the state libel laws (see *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964)) transmutes state libel cases into cases arising under Federal law. Accordingly, if we are correct in our contention that state law is not superseded in this case, there is no possible basis either in the Norris-LaGuardia Act or in the national labor policy for holding that the state court cannot also exercise its historic equity power.

B. *Even if the state court in the present case were required to reach the same result as a Federal court, the Norris-LaGuardia Act would not preclude the injunction entered in this case.*

We submit that the Norris-LaGuardia Act is not applicable here to prevent even a Federal court injunction, much less a state court one. Thus, even if a state court were required to reach the same result in this case with respect to the Norris-LaGuardia Act or otherwise as a Federal court, the injunction would stand.[1]

[1] While this Court in 1966 affirmed a ruling that the Norris-LaGuardia Act precluded the exercise of Federal court jurisdiction, such an affirmance by an equally divided Court does not constitute a precedent binding on this Court under the doctrine of *stare decisis*. "The principles of law which have been argued cannot be settled" by such a judgment. *Etting* v. *Bank of the United States*, 11 Wheat. 59, 78 (1826); *The Antelope*, 10 Wheat. 66, 126 (1825). See *Ohio ex rel. Eaton* v. *Price*, 364 U.S. 263, 264 (1960) (opinion of Brennan, J.).

Petitioners suggest that the underlying questions of law are resolved, permanently—that is, for the purpose of subsequent

We will not burden the Court with an extensive discussion of our contentions, since they are fully set forth in the Brief for the Petitioners in No. 220, O. T. 1966 (pp. 23-50), to which we now refer. Our contentions, in summary, are as follows:

First.—A reading of the Railway Labor Act together with the Norris-LaGuardia Act, and a harmonization of those two statutes, would indicate that the Norris-LaGuardia Act does not preclude a Federal court from enjoining secondary conduct of the sort involved here. (Petitioners Br., No. 220, O. T. 1966, pp. 23-41) It has been recognized from the time of the passage of the Norris-LaGuardia Act in 1932 that the anti-injunction provisions of that Act and the provisions of the Railway Labor Act would have to be accommodated. And a long line of decisions of this Court, from *Virginian R. Co.* v. *System Federation No. 40*, 300 U.S. 515 (1937), to the present date, hold that injunctive relief may be granted to carry out the processes and the purposes of the Railway Labor Act, notwithstanding the

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suits—between the parties by such a judgment. (Br., pp. 59-60) Petitioners furnish no support for this assertion, and there is none. While the judgment of the Court is final between the parties, clearly the direct estoppel by the judgment does not affect the issues of law as they may arise in subsequent cases, such as this one. And while the so-called doctrine of "collateral estoppel" is recognized as to certain matters which are adjudicated between the parties, that doctrine is generally understood as having its basic application to adjudications of matters of fact; *stare decisis*, not applicable here, is the relevant principle in the case of questions of law. *Commissioner* v. *Sunnen*, 353 U.S. 591, 601 (1948); *Restatement, Judgments*, § 70, Comments *e*, *f* (1942), and Comment *f* (1948). There is no reason why the fact that two parties have obtained an inconclusive four-to-four judgment as to a matter of law should restrict this Court in its consideration of that issue when it next comes before it, even if the litigants happen to be the same.

We accordingly propose to reargue the matter. We also contend, for similar reasons, that if Federal law applies, it too permits the issuance of the injunction issued by the state court here.

more general provisions of the Norris-LaGuardia Act. See *Brotherhood of Railroad Trainmen* v. *Chicago River & I. R. Co.*, 353 U.S. 30 (1957); *Brotherhood of Locomotive Engineers* v. *Louisville & N. R. Co.*, 373 U.S. 33 (1963); *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U.S. 232, 237-40 (1949); *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768 (1952).

The controversy between the petitioners and respondent as to whether respondent and the other nonstruck carriers should cease interchanging cars with the FEC and embargo that carrier is not a "dispute" to which the Railway Labor Act's processes relate. No procedures for the resolution of that controversy were or are available to respondent and the other nonstruck carriers under that Act. Accordingly, since, in the Railway Labor Act, Congress desired that economic warfare could be used against rail carriers by rail unions only after the lengthy procedures of the Act for adjusting such controversies had been exhausted—so as to minimize the possibilities of interruption of rail service—the concept of "involving or growing out of a labor dispute" as used in the Norris-LaGuardia Act and the concept of a "dispute" under the Railway Labor Act should be harmonized. Where there is no "dispute" with respect to which the parties may invoke the conciliatory procedures of the Railway Labor Act, the case should not be held to be one "involving or growing out of a labor dispute" under the Norris-LaGuardia Act.

Second.—Moreover, even apart from the Railway Labor Act, the Norris-LaGuardia Act does not preclude the grant of an injunction here even by a Federal court. See Petitioners' Br., No. 220, O. T. 1966, pp. 41-50. No case decided by this Court holds that the Norris-LaGuardia Act im-

munizes secondary conduct of the sort here involved from an injunction, even one issued by a Federal court, and there is no reason to reach such a result either in terms of the statutory provisions, the legislative history, or the gloss put on the Congressional attitude toward secondary boycotts by subsequent legislative developments. See also pp. 41-51, *supra*.

Accordingly, even if the Norris-LaGuardia Act were applicable to the state courts here to the same extent as it is applicable to a Federal court—a proposition for which there is absolutely no support—that Act would not preclude the issuance of the injunction passed by the Florida courts.

III. THE JURISDICTION OF THE FLORIDA COURTS TO ADJUDICATE AN ACTION BROUGHT EXCLUSIVELY UNDER STATE LAW IS NOT PREEMPTED BY THE JURISDICTION OF THE NLRB

Petitioners contend that dismissal of the state court action is necessary to protect the "exclusive primary jurisdiction" of the NLRB over the controversy which gave rise to respondent's suit in the Florida Circuit Court. (Petitioners' Br., pp. 74-76) But it is perfectly plain from the language of the LMRA, the interrelationship of that Act with the Railway Labor Act, and the decided cases in this and other courts that there is no NLRB jurisdiction over this controversy to protect. This controversy is not even "arguably subject" to NLRB jurisdiction. See *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959).

The definitional section of the LMRA is explicit in exempting controversies entirely within the railroad industry, as this one is, from the coverage of the Act and the juris-

diction of the NLRB. Section 2 of the Act provides in pertinent part:

> "(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any person subject to the Railway Labor Act, as amended from time to time . . . .
>
> "(3) The term 'employee' shall include any employee . . . but shall not include . . . any individual employed by an employer subject to the Railway Labor Act, as amended from time to time . . . ." 29 U.S.C. §§ 152(2), (3).

"Labor organizations" are subject to the Act only if "employees" within the foregoing definitions participate in them:

> "(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. § 152(5).

There is no dispute that all the participants in the controversy which led to the Circuit Court proceeding—the FEC, its employees, the Coast Line, the Seaboard, the Terminal Company,[1] their employees, and the petitioners —are persons subject to the Railway Labor Act. There is likewise no doubt that their labor relations with each other

[1] Terminal Company is a "carrier" under the Interstate Commerce Act, § 1(3), 49 U.S.C. § 1(3), and is subject to the Railway Labor Act by reason of § 1 First thereof, 45 U.S.C. § 151 First.

are excluded from the coverage of the LMRA. As this Court has often made clear, the Railway Labor Act is the Federal legislation providing a system for the settlement of disputes within the railroad industry. See, *e.g.*, *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U.S. 711 (1945); *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.*, 353 U.S. 30 (1957).

It makes a mockery of this scheme for dealing with labor controversies in the railroad industry to suggest that Congress also superimposed on it the regulatory regime of the LMRA and the potentially conflicting jurisdiction of the NLRB. The authors of the LMRA made it plain that they had no such purpose:

> "The exemption of employees of employers subject to the Railway Labor Act is to make it perfectly clear that in providing remedies for unfair labor practices of unions and their agents [in the LMRA] it was not intended to include such employees." S. Rep. No. 105, 80th Cong., 1st Sess., 19, I 1947 Leg. Hist. 425.

As this Court has said:

> "The Act, in its definition of an 'employer,' expressly excludes anyone subject to the Railway Labor Act. 61 Stat. 137, 29 U.S.C. § 152(2). It is of course true that employer-employee relationships of railroads such as respondent are governed by the Railway Labor Act, which was passed before either the National Labor Relations Act or the Labor Management Relations Act. Neither of the latter Acts was intended to tread upon the ground covered by the Railway Labor Act. It is clear that neither railroads nor their employees may carry their grievances with one another to the N.L.R.B. for resolution. . . .

"We think it clear that Congress, in excluding 'any person subject to the Railway Labor Act' from the statutory definition of 'employer,' carved out of the Labor Management Relations Act the railroads' employer-employee relationships which were, and are, governed by the Railway Labor Act." *Local Union No. 25* v. *New York, N. H. & H. R. Co.*, 350 U.S. 155, 159-60 (1956).[2]

The authorities relied on by petitioners as upholding NLRB jurisdiction at the instance of, or over, certain persons subject to the Railway Labor Act are all inapposite. In each such case, at least one of the other participants in the controversy was a person clearly subject to the LMRA and the controversy did not involve relationships entirely within the railway industry.[3]

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[2] See also *DiGiorgio Fruit Corp.* v. *NLRB*, 191 F.2d 642, 646-47 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 869 (1951); *NLRB* v. *Interior Enterprises, Inc.*, 298 F.2d 147 (9th Cir. 1961); *Bruno* v. *Northeast Airlines, Inc.*, 229 F. Supp. 716, 717 (D. Mass. 1964).

[3] Thus, in *Local Union No. 25* v. *New York, N.H. & H.R. Co.*, *supra*, this Court merely held that a railroad could invoke the processes of the NLRB against conduct of the Teamsters Union which was engaged in a dispute with certain motor carriers. Neither the Teamsters nor the motor carriers were persons subject to the Railway Labor Act with respect to their labor relations with each other, and the railroad had no labor dispute with any railway employees.

Similarly, in *International Brotherhood of Electrical Workers* v. *NLRB*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966), much relied on by petitioners (Br., p. 77), the Court of Appeals affirmed the assertion of NLRB jurisdiction over unions subject to the Railway Labor Act solely on the ground that they were "agents" of and "joint venturers" with other unions which were subject to the LMRA. The unions were engaged in unlawful secondary picketing of persons not subject to the Railway Labor Act, and Section 8(b) of the LMRA imposes liability for unfair labor practices by "a labor organization *or its agents*." 29 U.S.C. § 158(b) (emphasis supplied). See 150 N.L.R.B. No. 37, 57 L.R.

In the present case, nobody asserts that either petitioners, respondent, the Coast Line, the Seaboard, the FEC, or any of their employees related to the present matter are subject to the LMRA with respect to labor matters wholly within the railway industry, or are acting as agent for, or joint venturer with, any persons subject to the LMRA. *Cf. International Bhd. of Elec. Workers* v. *NLRB*, 350 F.2d 791 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 943 (1966). All the petitioners "are composed predominantly and overwhelmingly of employees of employers subject to the Railway Labor Act." (JA 93) All the pickets were employees of an employer subject to the Railway Labor Act and were members of local lodges composed solely of employees of employers subject to the Railway Labor Act. (JA 94) It is paradoxical to suggest that this matter is "arguably" subject to the jurisdiction of the NLRB when no one has been willing to step forward and make any such argument. Petitioners have been careful not to do so, perhaps understandably in view of their concession that the conduct alleged against them would be an illegal secondary boycott if Section 8(b)(4) of the LMRA applied. (Petition for Certiorari, p. 27) Indeed, in their

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R.M. 1526 (1964). There is no claim here of any "agency" or "joint venture" with a party subject to the LMRA.

Marine Engineers Beneficial Ass'n v. *Interlake Steamship Co.*, 370 U.S. 173 (1962), held merely that the NLRB had exclusive primary jurisdiction to determine whether the Marine Engineers was a "labor organization" under Section 8(b) of the LMRA, or was excluded from the coverage of the Act because it represented only "supervisors." The NLRB had previously laid down principles for determining a "labor organization" which made it clear that it would assert jurisdiction over the Marine Engineers. No such issue is presented in the instant case, nor do petitioners contend they are a "labor organization" under the LMRA. Moreover, *Marine Engineers* did not involve the specific exclusion of controversies within the railway industry from the coverage of the LMRA.

prior petition for certiorari, the petitioners "candidly and earnestly submit that their status is such that they are *not* covered by the L.M.R.A." (Petition for Certiorari, No. 244, O.T. 1966, p. 16, emphasis original). They reiterate that view in this case. (Br., p. 77)

It bears reemphasis that every member of the cast of characters in the events forming the basis of respondent's suit in the Circuit Court is a person subject to the Railway Labor Act, and this case exclusively concerns relationships within the railway industry.[4] No case has held the LMRA applicable in such a situation, and for good and obvious reasons. If this case is one "arguably" within the jurisdiction of the NLRB, it would be hard to imagine a railway labor case which was not. If petitioners are "arguably" subject to the LMRA simply because they are "mixed" unions representing a few nonrailroad employees, any dispute between these petitioners and any carrier in the United States would be cognizable before the NLRB. Indeed, under petitioners' reasoning, any controversy between any rail carrier and any railway union representing its employees and also representing any nonrailway employee anywhere—and many do, including the BRT, the ORC&B, and the BLF&E, petitioners here, who are important operating brotherhoods—could be brought before

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[4] "There are two major Federal Labor statutes that deal with the matter of labor disputes affecting interstate commerce, and they are not at all similar. They are very dissimilar. They have different approaches to the problem.

"One of them, of course, is the Taft-Hartley Act.
"The other one is the Railway Labor Act.
"Now, this is a pure Railway Labor Act dispute."

Argument on behalf of the present petitioners, in *Atlantic Coast Line R. Co.* v. *Brotherhood of Railway Trainmen*, U.S.D.C., M.D. Fla., May 4, 1966, Tr. 81 (subsequently 385 U.S. 20 (1966)).

the NLRB.[5] The opportunities for conflict between the two different regulatory systems would proliferate and the exception which Congress carefully preserved in the LMRA would become a nullity.[6]

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[5] Petitioners cite the litigation arising from the picketing by nonoperating rail unions of the Broward County Port Authority at the FEC's southern terminus in Florida as indicating the "arguability" of NLRB jurisdiction over the conduct in the present case. (Petitioners' Br., pp. 77-79.) The fact is, however, that the Broward County Port Authority—while it operates a railroad and in that capacity is an employer subject to the Railway Labor Act—is primarily engaged in operating port facilities handling ships from domestic and foreign ports. See *Broward County Port Authority* v. *Order of Railroad Telegraphers*, 54 L.R.R.M. 2228 (Fla. Cir. Ct. 1963). Moreover, the Port Authority can hardly be characterized as arguing for the "arguability" of NLRB jurisdiction, since although it first filed charges with the NLRB against the railroad unions which picketed it, it later withdrew those charges. *Id.*, at 2229. Its Federal-court damage action against these unions, which contained several causes of action, one of them alleging unlawful secondary activity under Section 303 of the LMRA, has been dismissed, putting an end to any suggestion that secondary conduct by rail unions in a dispute wholly within the railway industry is cognizable under the LMRA. *Florida East Coast R. Co.* v. *Broward County Port Authority*, S.D. Fla., Case No. 63-282-Civ.-DD. The pending appeal from the dismissal in the Fifth Circuit, No. 23,199, presents a number of unrelated issues and does not raise the question whether there is "arguable" NLRB jurisdiction over the matter. It has long been settled within that Circuit that a controversy wholly within the railway industry is governed by the Railway Labor Act and not by the LRMA. *International Association of Machinists* v. *Eastern Airlines*, 320 F.2d 451, 455 (5th Cir. 1963); *Louisville & Nashville R. Co.* v. *Brown*, 252 F.2d 149, 155 (5th Cir. 1958), *cert. denied*, 356 U.S. 949 (1958).

[6] This is not to say that the broad national policies which Congress has laid down in the LMRA may be ignored in construing the Railway Labor Act or in any judicial consideration of railway labor questions. But obviously the specific administrative regulatory regime of the NLRB under the LMRA is completely foreign to a matter like the present one. See pp. 27-34, *supra*.

IV. THE FIRST AND FOURTEENTH AMENDMENTS DO NOT PREVENT THE LIMITED INJUNCTION ENTERED IN THIS CASE

Petitioners concede, as they must, that the injunction in this case was a limited one and did not ban all picketing of respondent's premises. (Petitioners' Br., p. 80) It specifically allowed petitioners to picket at the gate designated for use by employees of the FEC, the only employer with which petitioners had a labor dispute.[1] (JA 184-85) The picketing restrained by the injunction was admittedly engaged in by petitioners to "stop all movement of rail traffic" through the Jacksonville terminal and had as its objective coercing respondent and the other carriers to cease interchanging cars with the FEC. (JA 195)

The suggestion that the First and Fourteenth Amendments immunize conduct of this character—bringing pressure on respondent and the other carriers to violate state laws—flies in the face of this Court's careful decisions over many years upholding state authority to regulate

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[1] Petitioners claim that the separation of the FEC workers from the other workers at the reserved gate was not well policed (Petitioners' Br., p. 20), but if so, petitioners' remedy does not lie in a denial of state court power to pass any injunction under the circumstances. Petitioners made no application for conditions on the trial court's injunction which would have insured policing of the reserved gate procedure. Indeed, it was stipulated in the trial court that petitioners never complained to Terminal Company of any lack of policing of the reserved gate procedure. (JA 95) The petitioners' position is simply that they are permitted to picket so as to cut all rail movements through the terminal, including picketing the main lines of the Coast Line and Seaboard and stopping main line trains, as the record indicates was done. (JA 63, 75, 216-17, 300-06)

picketing.[2] As this Court said in *Cox* v. *Louisiana*, 379 U.S. 536, 555, 563 (1965):

> "We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech."
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> "The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association. This principle has been applied to picketing and parading in labor disputes."

Thus, in many cases this Court has upheld state restraints on picketing which was designed to bring about objectives made illegal by state law, as against claims of violation of the First and Fourteenth Amendments. In *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490 (1949), this Court held that a state could validly apply its restraint of trade law to enjoin employees from picketing to induce an employer not to do business with nonunion employers; as in the present case, there was no dispute between the picketed employer and the employees, except that he did business with the real objects of their campaign, the nonunion employers. This Court said:

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[2] Claims that the LMRA prohibitions on secondary conduct violate the First Amendment have been summarily rebuffed whenever raised. *International Brotherhood of Elec. Workers* v. *NLRB*, 341 U.S. 694, 705 (1951); *National Maritime Union* v. *NLRB*, 346 F.2d 411, 420 (D.C. Cir. 1965) *cert. denied*, 382 U.S. 840 (1965); *National Maritime Union* v. *NLRB*, 342 F.2d 538, 546 (2d Cir. 1965), *cert. denied*, 382 U.S. 835 (1965).

"[P]lacards used as an essential and inseparable part of a grave offense against an important public law cannot immunize that unlawful conduct from state control . . . . it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. [citations omitted] Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society . . . . [The state] has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way. . . . We hold that the state's power to govern in this field is paramount, and that nothing in the constitutional guaranties of speech or press compels a state to apply or not to apply its anti-trade-restraint law to groups of workers, businessmen or others." 336 U.S., at 502, 504.

See also *Hughes* v. *Superior Court,* 339 U.S. 460 (1950); *Building Service Employees* v. *Gazzam,* 339 U.S. 532 (1950); *Bakery & Pastry Drivers & Helpers Local 802* v. *Wohl,* 315 U.S. 769, 775, 776 (1942) (Douglas, J., concurring); *cf. Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.,* 335 U.S. 525, 531 (1949).

Here the injunction did not ban all picketing *per se,* whatever its location or its objective. The decree was framed to deal with the specific factual situation before the court. It is no more subject to attack on First Amendment grounds than would be an LMRA cease and desist order or injunc-

tion against secondary activities in an industry subject to that Act. See the authorities cited in note 2, p. 81, *supra*.

The decree here protected the petitioners' right to communicate the fact of their dispute with the FEC and to appeal to FEC employees not to cross the picket line. At the same time, it protected the right of respondent and the other carriers to be free of conduct designed to coerce them to violate state law. As was true in *Building Service Employees* v. *Gazzam, supra*:

> "The injunction granted was tailored to prevent a specific violation of an important state law. The decree was limited to the wrong being perpetrated, namely, 'an abusive exercise of the right to picket.'" 339 U.S., at 541.[8]

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[8] *American Federation of Labor* v. *Swing*, 312 U.S. 321 (1941), relied on by petitioners (Petitioners' Br., p. 83), merely held that a state ban on all picketing of an employer by persons who were not his employees violated their freedom of speech. 312 U.S., at 325. The decree in this case does not ban all picketing of respondent's premises. *Swing* does not even remotely imply that a state is without power to limit the permissible scope of picketing so as to prevent coercion of a person into violating state law.

Likewise, in its recent decision in *Amalgamated Food Employees Union, Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), this Court held that a state cannot ban *all* picketing in a large commercial shopping center open to the public on the sole ground that the pickets are not employees of the picketed employer or on the ground that the property is privately owned. The decision, as this Court made clear, simply reaffirmed the principles of *Swing* and *Marsh* v. *Alabama*, 326 U.S. 501 (1946):

> "All we decided here is that because the shopping center serves as the community business block 'and is freely accessible and open to the people in the area and those passing through', *Marsh* v. *Alabama*, 326 U.S., at 508, the State may not delegate the power, through the use of its trespass laws, *wholly to exclude* those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put." 391 U.S., at 319-20 (emphasis supplied)

CONCLUSION

For the reasons stated, the judgment should be affirmed.

Respectfully submitted,

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